

1 IN THE UNITED STATES DISTRICT COURT.
2 FOR THE DISTRICT OF NEW JERSEY
3 CIVIL 02-2917 (JEI)

4 PATRICK BRADY, SALLY YOUNG,
5 HOWARD HOLLANDER, THEODORE CASE,
6 AND MICHAEL FINUCAN, individually
7 and on behalf of all others
8 similarly situated,
9 Plaintiffs,

10 V.

VOLUME 16
TRIAL TRANSCRIPT

11 AIR LINE PILOTS ASSOCIATION,
12 Defendant.

CAMDEN, NEW JERSEY
JULY 6, 2011

13 B E F O R E: HONORABLE JOSEPH E. IRENAS
14 UNITED STATES DISTRICT JUDGE

15 A P P E A R A N C E S:

16 TRUJILLO, RODRIGUEZ & RICHARD
17 BY: NICOLE M. ACCHIONE, ESQ.
18 AND: LISA J. RODRIGUEZ, ESQ.
19 AND
20 GREEN JACOBSON, P.C.
21 BY: ALLEN PRESS, ESQ. (MO. BAR)
22 AND: JOE D. JACOBSON, ESQ. (MO. BAR)
23 For the Plaintiffs.

24 ARCHER GREINER
25 BY: STEVEN FRAM, ESQ.
AND
KATZ & RANZMAN
BY: DANIEL M. KATZ, ESQ.
FOR THE DEFENDANT AIR LINE PILOTS ASSOCIATION.

ELIZABETH GINSBURG, ESQ.
IN-HOUSE COUNSEL FOR ALPA.

1 Pursuant to Section 753 Title 28 United States
2 Code, the following transcript is certified to be an
3 accurate record as taken stenographically in the
4 above-entitled proceedings.

5 S/ LYNNE JOHNSON

6 Lynne Johnson, CSR, CM, CRR
7 Official Court Reporter
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17 LYNNE JOHNSON, CSR, CM, CRR
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1 THE COURT: Good morning. Who is your first
2 witness, Mr. Fram.

3 MR. FRAM: Seth Rosen.

4 MR. FRAM: Was your Honor going to permit argument
5 this morning on the issue of the cut-off date or did you want
6 to defer that until later.

7 THE COURT: I would rather defer that until
8 tomorrow. Those are on exhibit 148?

9 MR. FRAM: Yes, your Honor.

10 THE COURT: Have you identified the ones?

11 MR. FRAM: We put a tab in the notebook on the
12 document dated April 23, 2002 and our requests was to exclude
13 everything after that.

14 THE COURT: Okay.

15 MR. FRAM: We discussed that with plaintiffs
16 counsel and I believe that they do not agree with our
17 request. We are still trying to work out the issue of
18 deposition designations, your Honor. One issue that perhaps
19 you can provide --

20 THE COURT: The only one I have so far is Babbitt.

21 MR. FRAM: Yes, your Honor. We provided to Mr.
22 Press what we propose to show and we will await his comments.
23 We did have designations, your Honor, on two other
24 transcripts only, not videos and I did receive very late
25 yesterday some counter designations. We have an issue about

1 the scope of the counter designations and I am wondering if
2 your Honor can provide some general guidance.

3 With respect to Bensel we designated just a couple
4 minor portions. The designations that came back, your Honor,
5 the counter designations are very extensive. I think, for
6 example, that we designated basically three chunks which came
7 back looks like about 15 or 20 chunks which I think would be
8 hours and hours.

9 My position on behalf of defendant, your Honor, is
10 that the plaintiffs counter designations should be limited to
11 completeness. Their position is that it is as though the
12 witness was being cross examined and they could go much more
13 broadly.

14 If your Honor has any thoughts about that, that
15 might guide counsel, I think that would be appreciated.

16 THE COURT: And the reason Bensel isn't being
17 brought in here.

18 MR. FRAM: Unavailable. We tried to subpoena him.
19 We were told when we tried to serve him he moved to Virginia.
20 We tried to serve him a couple of weeks before trial and to
21 our surprise was told that he had moved.

22 MR. PRESS: We confirmed that yesterday with one of
23 our clients. He did in fact move to Virginia.

24 MR. FRAM: What we had hoped, your Honor, was to
25 read one small clip from his deposition which talks about his

1 background, his role as merger chair and then about this
2 incident on March first where this other fellow, the pilot
3 tried to come across the pilot at him exhibiting hostility.
4 That was the limit of what we proposed. Plaintiffs have come
5 back late yesterday and counter designate, is it looks, your
6 Honor, like another maybe 25 or 30 pages which obviously will
7 take much longer and goes beyond the scope of that one
8 incident.

9 So we would object to that and again if your Honor
10 is comfortable giving some general guidance about that we
11 might be able to work it out. Otherwise I think we will have
12 to submit it to your Honor.

13 MR. JACOBSON: Your Honor, I made the counter
14 designations. Alan and I spoke about that and he said, well,
15 let's try to cut it back to something between what they want
16 and what we want. So I am going through that right now. I
17 think there is more to be counter designated than simply
18 completion of the line. Federal Rules provide that the
19 parties in the deposition, the other party can use it for any
20 purpose. I am cutting it back. Hopefully we will get it
21 worked out in the next break.

22 MR. FRAM: Great. We had the same issue on Glasby.
23 I would ask counsel to take another look at the counter
24 designation of Glasby and we will try to work it out, your
25 Honor. Thank you.

1 THE COURT: Okay.

2 (Pause)

3 THE COURT: Do you know what exhibit number the
4 actual acquisition agreement between American and TWA, the
5 actual agreement in which they --

6 MR. PRESS: J 272 or P-272, 1 or the other.

7 THE COURT: Anybody have a copy of that laying
8 around.

9 MR. FRAM: Yes.

10 THE COURT: I am sure I have it here.

11 MR. FRAM: I have one, your Honor.

12 (Jury enters the courtroom.)

13 THE COURT: Good morning, everybody. You are all
14 here bright and early. I emphasize the word early.

15 Mr. Fram, you may call your first witness.

16 MR. FRAM: Thank you, your Honor. We call Seth
17 Rosen who has already taken the stand.

18 Seth Rosen, Sworn. Direct by.

19 MR. FRAM:

20 SETH DAVID ROSEN. Sworn.

21 DIRECT EXAMINATION.

22 BY MR. FRAM:

23 BY MR. FRAM: If I may.

24 THE COURT: Please.

25 Q. Mr. Rosen, good morning. You are a former employee of

1 the Air Line Pilots Association international, commonly
2 referred to as ALPA?

3 A. Yes, I was.

4 Q. Let's start with some background. How old are you?

5 A. I just turned 70.

6 Q. Okay. And tell us about your educational background to
7 start with?

8 A. I went to undergraduate and law school at G W, and was
9 admitted.

10 THE COURT: That is George Washington.

11 THE COURT: George Washington University. Excuse
12 me. George Washington University. Graduated law school in
13 1966. Was admitted to the bar and then went to work for the
14 national labor relations board in Washington, DC.

15 Q. And what does the National Labor Relations Board do?

16 A. Well, it regulates labor relations in all industries
17 except air and rail.

18 Q. And for how long did you work at the, referred to as the
19 NLRB?

20 A. Yes, sir.

21 Q. How long did you work at the NLRB?

22 A. Just short of five years.

23 Q. What type of work did you do there?

24 A. I was litigation, I first was a lawyer in the advice
25 branch and then in the appellate court branch doing briefs,

1 and arguing cases before the Court of appeal -- courts of
2 appeal. Did some District Court work then to.

3 Q. This is all federal court work?

4 A. All federal court work.

5 Q. What did you do after working at the NLRB for five
6 years?

7 A. I was hired by the Air Line Pilots Association in March
8 of 1971 as a lawyer in the legal department.

9 Q. And for how long did you work as a lawyer in the legal
10 department at ALPA?

11 A. I was in the legal department for about three years. I
12 was promoted to assistant director and then transferred after
13 a reorganization within ALPA to the representation
14 department where I became the manager of contract
15 administration slash legal. It is a big title but I oversaw
16 the grievance arbitration work, case handling by people in
17 the field, a whole variety of legal types of
18 responsibilities.

19 Q. What year are we talking about when you got transferred
20 over?

21 A. 1974.

22 Q. For how long did you do that type of work in ALPA?

23 A. Pretty continuously then until I retired I was promoted
24 to director of representation department in 1984, a position
25 I held until I retired in 2003.

1 Q. Are you still working today?

2 A. I am.

3 Q. For whom did do you work?

4 A. I work for a wholly owned subsidiary of the airline
5 pilots association called the Airline Pilots Services
6 Corporation. I specialize in doing work with the
7 International Federation of Air Line Pilot Associations, and
8 pilot groups around the world at different carriers. And I
9 also do on occasion work within the U.S., still.

10 Q. I want to focus on your work within the representation
11 department of ALPA during the period leading up to 2001. Did
12 you get involved in organizing other nonALPA pilots to try to
13 join ALPA?

14 A. Yes. Starting in 1982 I was involved in organizing
15 efforts. 1982 ALPA adopted a policy of really expanding the
16 membership and organizing, for example, all the regional
17 carrier pilots and I was directly involved in that operation,
18 both out on the line, actually doing the organizing, and
19 putting together plans.

20 During that period we organized at least 50, maybe
21 more carriers during the period from 1982 until about 2000,
22 during my period of time, over 50 carriers.

23 Q. And those organizing campaigns, they were subject to the
24 requirements of the Railway Labor Act?

25 A. Yes, they were.

1 Q. Tell us, how did you go about trying to organize other
2 pilot groups, what were the different approaches that were
3 used?

4 A. President it depended upon the type of organizing drive.
5 There are two basic types of drives. One, organizing
6 efforts, that is, and one is where a pilot group is
7 unorganized, and reaches out and we get a call from a core
8 group, and that is one type of drive.

9 The other type of drive is where the pilot group is
10 organized, and we have a different method of dealing with
11 that when we are dealing with a group that is already
12 organized. We actually work out a merger agreement. But
13 going back to the first one, the first one is a multi step
14 process in terms of organizing, unorganizing unorganized
15 carriers because you have to go out and you have to collect
16 representation cards that you would then file with the
17 government agency and have an election. So you start off,
18 first step really is to form up a core group from within the
19 pilot group. Then we designate a staff to assist them and
20 then we put together a plan in which we have communications,
21 you know, a lot of support, different resources used. And
22 try to develop a strategy to collect cards. And when we
23 reach a certain level of cards, which at that point we are
24 looking for maybe 70 to 80 percent showing of interest in
25 terms of cards.

1 Q. Let's break that down. Can you describe the kinds of
2 cards you are referring to?

3 A. These are cards that authorize the holding of an
4 election and you go to a, you know, a pilot within the
5 bargaining unit and you solicit him to sign a card which you
6 would then file with the National Mediation Board, and if you
7 had the necessary showing of interest in the case of an
8 unorganized carrier, 35 percent, you could then trigger an
9 election. You don't go with 35 percent.

10 Q. Let's break the steps down. Someone goes and prints
11 cards?

12 A. We print the cards.

13 Q. What is the next step?

14 A. We print the cards, we distribute the cards.

15 Q. What do the cards say. Do they say something like I
16 hereby certify I am interested in being represented by a
17 particular union?

18 A. Yes. I, you have to sign the card. The card is valid
19 for one one year.

20 Q. The cards go to all of the pilots who work at a
21 particular airline?

22 A. Yes.

23 Q. And how many cards do you have to -- the significance of
24 the cards is what, if you get enough cards you can trigger a
25 vote on whether the union will represent the pilots?

1 A. Right. You can then trigger a representation election
2 that would be conducted by the National Mediation Board.
3 They would do an investigation to determine whether or not
4 you had the showing of interest. If they found you had the
5 showing of interest, they then would order an election,
6 usually about a four-week period for balloting. In the old
7 days it was a mail ballot.

8 Now it is done electronically that. Would be the
9 process. If we were to win the election we would be
10 certified and became the bargaining representative for that
11 pilot group.

12 Q. There is a specific percentage of cards you need to
13 trigger the election?

14 A. Yes, 35 percent in an unorganized group.

15 Q. 35 percent of whom, of all the pilots?

16 A. All the eligible voters within the bargaining unit.

17 Q. You mentioned the phrase showing of interest. Explain
18 what that means?

19 A. The showing of interest is the actual support you have,
20 the 35 percent showing of interest.

21 Q. And what type of investigation, what agency investigates
22 and decides --

23 A. This was the National Mediation Board.

24 Q. What type of investigation do they do once they receive
25 the cards?

1 A. They verify that the cards are actually valid. They
2 check it against the signatures on file with the employer.

3 Q. And if you meet that 35 percent threshold and there is a
4 vote, what percentage of the pilots have to vote in favor for
5 ALPA to be certified?

6 A. During that period of time, the rule has changed, but
7 during the relevant period of time, it required 50 percent
8 plus one of all the eligible voters within the bargaining
9 unit had to vote.

10 Q. Did you mention a couple minutes ago you were typically
11 looking for a higher percentage, 70 to 80 percent?

12 A. That's correct.

13 Q. Can you explain that for us?

14 A. Well, the experience that I have had, you know, over
15 this period of time is that if you go in with a thin margin
16 you have a real problem. One, you won't win the election
17 because there will be attrition, especially in an unorganized
18 carrier, the carrier is probably going to get involved in
19 this election and we have to deal with that issue. So there
20 will be a significant attrition or fall off of the votes, so
21 if you start, let's say, with 55 percent, you are likely to
22 end up with somewhere around 40 percent voting for. If you
23 start with any percent, it is a lot. But you will win the
24 election. If you have 70 percent, it is pretty sure that you
25 will win the election.

1 So I established a guideline during that period of
2 time of not filing, first of all, we would try and get to the
3 80 percent quickly if we could do that, great, we would file,
4 and that was pretty much a given that we would win the
5 election.

6 If after a while we saw that we weren't getting
7 there and it was dragging, then we would probably go with 70
8 percent and take a chance. When we went with less we
9 generally were not successful.

10 Q. So if you had fewer than 50 percent sign cards, what
11 would you have done in a situation like that?

12 A. Would not file.

13 Q. You wouldn't pursue representation?

14 A. I would not pursue, I would not recommend pursuing
15 representation on the part of ALPA.

16 Q. I think you mentioned that when you had pilots that were
17 already represented by another union, there was a typically a
18 different approach?

19 A. Yes.

20 Q. How did you learn to approach those groups of pilots
21 during the period after 1982 that we are discussing?

22 A. Over a period of time there are a number of carriers out
23 there, a number of airlines that are organized into
24 independent unions, and when dealing with an organized
25 carrier, it was their policy not to raid other unions, and

1 two, to work in a collaborative way, a cooperative way
2 torques bring those groups into ALPA through a merger
3 agreement. So it was entirely a different process. This was
4 a process we used, for example, at continental airlines.

5 Q. Walk us through the process, are you saying this is a
6 process, an approach that you developed during the period in
7 which you were doing the campaign?

8 A. Yes.

9 Q. That period was from about 1982 up until when?

10 A. 2003.

11 Q. And walk us through the process that you developed, the
12 approach you developed?

13 A. I should say I developed it in conjunction with the
14 general manager and other people. But essentially,
15 organizing was within the representation department
16 jurisdiction and we kind of over saw that and ran it. So at
17 any rate, we developed, you know, a multi step process. The
18 first thing we needed to really undertake the effort to even
19 begin was you needed a resolution from the independent that
20 they sought to merge with ALPA, that they would like to enter
21 into discussions to merge with ALPA, and then if we got that
22 kind of resolution from their board, from their executive
23 body, then we would trigger a joint merger committee, we put
24 together a committee made up of some of their people, our
25 people, and they would sit down and hammer out a merger

1 agreement. If they were successful one of the essential
2 parts of that was within an independent union structure under
3 their Constitution, they would require a vote of their
4 membership, in order to authorize that kind of action. And
5 so there would be an internal vote of the membership. And if
6 they voted for it, then the ALPA executive board would then
7 pass a resolution supporting the merger, and then the next
8 step after that would be we would take all of that
9 information and file it with the National Mediation Board,
10 and request that they transfer the bargaining rights from the
11 independent to ALPA. And at that point we would become the
12 bargaining agent.

13 Q. This process you just described, did it involve any of
14 the kind of cards that you talked about before?

15 A. No, it doesn't involve cards. There is no election
16 conducted by the National Mediation Board.

17 They will approve internal election under those
18 circumstances. And we have done this a number of times over
19 the past 25 years, 30 years.

20 THE COURT: There is no legal bar, though, to
21 conducting a card campaign among that group of pilots that is
22 already organized.

23 THE WITNESS: No, there is no legal bar.

24 THE COURT: Maybe a matter of policy but as a
25 matter of law you could conduct --

1 A. There is a two-year bar.

2 THE COURT: Two-year bar after --

3 THE WITNESS: They first became organized and
4 certified, then they have two years to negotiate the first
5 contract.

6 THE COURT: But after that.

7 THE WITNESS: After that there is no bar.

8 THE COURT: You could go the card route, even
9 though they were organized.

10 THE WITNESS: Yes, you could.

11 Q. So this approach you described, by what point in time
12 had you concluded that if the pilot group was already
13 represented by a union, an independent union, that a card
14 campaign would not be used?

15 A. My approach was that would be failed strategy. I never
16 went in in that route. Again, we don't raid independents,
17 number 1, that has never been our policy.

18 Number 2, trying to organize a group without the
19 support, the internal support and the leadership of, you
20 know, the core, is extremely difficult, if not impossible. I
21 just haven't seen it so we always look to have the core
22 support.

23 Q. You said before you were involved in about 50 organizing
24 campaigns?

25 A. Yes.

1 Q. Was there ever an organizing effort where the other
2 pilot group was represented by independent independent unions
3 and ALPA tried to use a card campaign?

4 A. Not that I remember.

5 Q. Let me just focus you on late 2000. Do you recall when
6 ALPA adopted the so-called unity resolution?

7 A. Yes, I do.

8 Q. Tell the jury your understanding of what the unity
9 resolution was?

10 A. Once Duane came, Captain Woerth, came into office, we
11 initiated a strategy of, and a plan to expand membership and
12 we had some expressions of interest from some of the large
13 independent unions.

14 So by 2000, actually we started talking to
15 continental in I think 1999, maybe even 1998, but by 2000 it
16 was clear that we needed to really expand this and make this
17 more public, and so we came out with this unity resolution
18 which really said that we wanted to organize, go out, meet
19 and talk and in a collaborative way with independents,
20 bringing them into ALPA, and as soon and as much as possible.

21 Q. When that resolution was adopted were there particular
22 pilot groups other than continental that ALPA's leadership
23 had in mind?

24 A. Yes.

25 Q. Trying to bring into ALPA?

1 A. Yes.

2 Q. Who were they?

3 A. Well, we have, I think in the resolution there were only
4 four names, but in fact in our planning there were --

5 THE COURT: Who were the four names?

6 A. The four names named were continental, Federal Express,
7 American, and Air Canada. Because we also represent pilots
8 in Canada, your Honor. We had about twelve pilot groups in
9 can Canada currently. And Air Canada was not a member of
10 ALPA. They were an independent dependent and in fact they
11 had broken off from the Canadian airline.

12 Q. Okay. And within the planning process were there other
13 pilot groups?

14 A. Southwest and UPS.

15 Q. I think you named a total of 6. Of those, which of
16 those were fully represented by independent unions and which
17 were not?

18 A. All of them were represented by independent unions.

19 Q. So was it contemplated when the unity resolution was
20 adopted and these six groups were identified, was it couldn't
21 plate D that a card campaign would be used to try to organize
22 at any of them?

23 A. No.

24 Q. For the reasons you described before?

25 A. Yes.

1 Q. And was there an order of priority?

2 A. Yes, there was.

3 Q. When you came up with this list of pilot groups?

4 A. Yes.

5 Q. What was the order of priority?

6 A. The order of every priority, clearly we were targeting
7 Continental as the first because we had already initiated
8 discussion was Continental over a year before and now we were
9 moving towards Reilly bringing that to conclusion so
10 Continental was the first.

11 Second favorite was Federal Express, which had also
12 started to stir and indicate an interest in rejoining ALPA.
13 They had left ALPA about five years previous and now because
14 of changes in conditions there, they desired to come back to
15 ALPA.

16 Q. Okay. How about the other, those are the first two.
17 How about the other ones that you mentioned?

18 A. Well, in my sense, I was looking to see if we could get
19 now meant momentum out of those first two. Then the two that
20 I thought would be the most, well, the easiest to try and
21 work something through were Southwest and UPS. And after
22 that, hopefully we could go after American and Air Canada.

23 Q. You said something about momentum. Would the plan in
24 late 2000 when the unity resolution was adopted to try to
25 bring all six of these groups into --

1 A. We are not living in a land of unlimited resources so it
2 was impossible to do that from a resource standpoint.
3 Running a drive like Continental is an enormous undertaking.
4 It involves a huge amount of resources. That was a group of
5 5,000. I had two assistant directors working on that. I had
6 other people on the staff. We had people from communications
7 working on that. We had people from, we had pilot
8 volunteers. We had over 50 volunteers, I think much more
9 than that but I can't remember exactly how many, but we had a
10 whole plan and network, we had to get facilities. It is a
11 very intense undertaking. Very intense.

12 Q. In terms of the order of priority you mentioned, why was
13 American and Air Canada at the bottom?

14 A. Because I thought they were the least possible.

15 Q. Explain why --

16 A. Most unlikely to be able to organize because of past
17 history and their current status. One, in the past history
18 of both they broke off from ALPA or CALPA, which is now
19 merged with ALPA, so we have a Canadian operation minus.
20 American had broken off in 1963. Both were strong carriers
21 standing on their own, did not really see the great benefit
22 in moving towards a national union at that particular point
23 in time.

24 Q. As of the point in time, you recall the announcement of
25 the TWA bankruptcy and the proposed transaction American

1 would buy a TWA asset?

2 A. Yes, I do.

3 Q. January of 2001?

4 A. Yes, I do.

5 Q. As of that point in time, by the way, you were aware
6 that in October, 2000, Captain Woerth went and talked to the
7 board of American's union, the APA?

8 A. Yes, I am.

9 Q. Were you present when he spoke to the APA?

10 A. No, I was not.

11 Q. What was your sense about the likelihood of bringing the
12 American pilots back to ALPA?

13 A. I thought it was highly unlikely.

14 MR. PRESS: Objection.

15 THE COURT: Sustained.

16 Q. Did you have --

17 A. Excuse me.

18 Q. Did you have discussions with Captain Woerth in late
19 2000 about the chance of the likelihood that the American
20 pilots might come back to ALPA?

21 A. I don't remember any specific conversation.

22 Q. Okay. As of the point in time when the TWA bankruptcy
23 and American transaction were announced, had even the first
24 step that you mentioned before, the merger resolution of some
25 kind from the independent union, had that happened with

1 respect to the American Airlines?

2 A. No, it had not.

3 Q. Had it happened with respect to Continental?

4 A. Yes, it had.

5 Q. Let's talk about the organizing campaign at Continental.
6 Continental add approximately how many pilots in late 2000?

7 A. Approximately 5,000. They had two divisions, they had
8 the big airline, Continenatl and Continental Express at that
9 point. They were both part of the same unit though.

10 Q. The union representing the Continental pilots was what?

11 A. IACP, Independent -- well, IACP is the initials.

12 Q. Did that union represent only Continental pilot or did
13 it represent pilots from other airlines?

14 A. Only Continental and Continental Express.

15 Q. Talk us through the steps that ALPA took to try to bring
16 the Continental pilots into ALPA?

17 A. The first thing that had was that we had a meeting with
18 their president and vice president who told us that the board
19 wanted to discuss merging with ALPA, coming back to ALPA.
20 They had been in ALPA many years before.

21 The second step, after they indicated that
22 interest, was for us to analyze the situation and try and
23 determine whether or not we would have support within ALPA
24 because there were a lot of thorny issues that grew out of
25 the strike in 1983 to 1985. So we internally then formed up

1 a group that went out to the large MEC's, that is like
2 American -- not American, I mean TWA, or United, or
3 Northwest, and we discussed the possibility of merging with
4 Continental. And we got their approval and at that point we
5 then formed up a joint merger committee.

6 Q. An a joint committee between who?

7 A. Between Continental and ALPA.

8 THE COURT: You went to other airline pilot groups?

9 THE WITNESS: Within ALPA.

10 THE COURT: Within ALPA.

11 THE WITNESS: Yes. Because they needed to support
12 this. There was a very difficult history going back to the
13 strike between 1983 to 1985. So it was a very complicated
14 membership, there were complicated membership issues. We had
15 to go and pretty much get everyone's blessing that we could
16 move forward, which we ultimately did and then we formed this
17 merger committee.

18 Q. Just to go back, what was your understanding of why the
19 Continental pilots were interested in maybe coming back to
20 ALPA?

21 A. I think they recognized the advantages of a national
22 union. There were a lot of people within that unit that were
23 former members of ALPA and leaders of ALPA and a lot of them
24 had moved into leadership positions within IACP and they saw
25 the benefit, they saw the benefit of a lot of the advantages

1 we bring to the table in terms of representing pilots and
2 their interests plus they saw the advantage of being under
3 the ALPA merger policy so that in the event they would be
4 merged in the future with another ALPA carrier they would be
5 covered by the ALPA merger policy.

6 Q. You mentioned that a joint committee of some type was
7 formed between Continental's union and ALPA to pursue merger
8 discussions?

9 A. Yes.

10 Q. What happened next in terms of the effort to bring the
11 Continental pilots into ALPA?

12 A. The next thing that happened was we agreed upon a merger
13 agreement to merge the two in terms of all the business
14 points you would deal with, staff, money, things like that.
15 And an orderly transition. That was the next step. After
16 that we then had to start going out and holding a vote within
17 Continental pilot group.

18 Q. What did that involve?

19 A. Well, that involved a huge undertaking, a lot of pilots,
20 we had office's at all their domiciles. We would go to crew
21 rooms. We had as I said other 50 pilot volunteers who would
22 go around and talk to pilots. We had a huge amount of staff
23 support to handle this undertaking because it was very
24 complicated and we had lawyers assigned because there were
25 legal issues. Communications people assigned. It was a full

1 undertaking.

2 Q. The leadership of the Continental pilots union had
3 agreed to merge, why was there any need to go and talk to the
4 individual pilots?

5 MR. PRESS: Judge, I object to the relevance of
6 this. You don't know why we are talking about the
7 Continental pilots.

8 THE COURT: Yeah, I am beginning to --

9 MR. FRAM: If you want me to explain, your Honor, I
10 am happy to. We are talking about what you do to organize
11 pilots and we are going to compare it to what never happened
12 at American. None of this happened at American.

13 THE COURT: You are wrong. That is a misstatement
14 of facts. There were cards out there. Those cards didn't
15 come from the Tooth Fairy. Those cards were being collected.
16 They were handed over to ALPA. Your statement that none of
17 this happened in American is not a true statement.

18 MR. FRAM: Sorry, your Honor. None of this was
19 done by ALPA. ALPA did not organize other unions as
20 explained by the witness.

21 THE COURT: That is unclear. That is your take. I
22 am not sure the evidence doesn't support another inference on
23 that.

24 MR. FRAM: Your Honor, I respectfully disagree with
25 that.

1 THE COURT: The jury will decide that. That is
2 what we have them here for.

3 MR. PRESS: Your Honor, I believe Mr. Fram's
4 statement to this jury but heard by this jury opened the door
5 to what happened after April 3rd, 2002.

6 THE COURT: Let's leave that for another day.

7 I think the jury has the drift of what you are
8 saying. I don't think we need an explanation for why there
9 has to be a big campaign to generate votes among the pilot
10 groups itself in a merger.

11 Q. Did ALPA in any way shape or form initiate a card
12 campaign at American Airlines?

13 A. No, they did not.

14 THE COURT: In the card campaign, where do the
15 cards come from?

16 A. In a card campaign we generate the cards.

17 THE COURT: That's right.

18 A. We print cards. When we do our own card campaign we
19 print the cards and distribute the cards.

20 THE COURT: You are aware there was a card campaign
21 going on in a limited sense with American.

22 A. I am aware.

23 THE COURT: You are aware those cards were
24 delivered, in fact, to ALPA.

25 A. Yes.

1 THE COURT: Those cards then disappeared later on,
2 the physical cards. You know that as well.

3 THE WITNESS: Yes, that was in my deposition.

4 THE COURT: You don't know what happened.

5 THE COURT: That's correct.

6 THE COURT: Do you know who printed the cards?

7 A. No, I don't know.

8 THE COURT: You don't know whether it was American
9 that printed the cards and provided them to Hunnibell and
10 Clark, the American pilots or they somehow or other got out
11 and got cards of their hone.

12 A. They could have done that.

13 THE COURT: They could have done that but you
14 don't know.

15 A. I am not aware of providing any cards to them.

16 THE COURT: You can't say, you don't simply know.
17 You are not even aware of where the cards are, that might
18 tell us, if we had the cards we might know who prepared them,
19 wouldn't we? If we physically had the cards.

20 A. I am not sure.

21 THE COURT: Maybe. It might give us a clue who the
22 printer was, was a printer used by --

23 A. I understand what you are saying, but I am am not sure.

24 THE COURT: There is a lot of things we could do if
25 we had the cards.

1 A. I understand what you are saying.

2 THE COURT: Go ahead.

3 Q. Mr. Rosen, did ALPA printed cards that were used to
4 distribute to the American pilots?

5 A. No, I am not aware --

6 THE COURT: No, no. Don't say no. You don't know,
7 do you, where the cards came from? You don't know where the
8 cards came from.

9 A. I don't know where they came from.

10 THE COURT: And you don't know where they are so we
11 can't do any forensics on them to figure it out, right? Is
12 that correct?

13 THE WITNESS: Yes.

14 THE COURT: Don't try to get him to say that he
15 knows American didn't distribute them. He is not aware that
16 they did, but he doesn't know where they got the cards. I
17 you don't know where Clark and Hunnibell got the cards.

18 A. All I know.

19 MR. FRAM: We have testimony that --

20 THE COURT: He doesn't know. What other witnesses
21 say is one thing. He doesn't know.

22 Q. Mr. Rosen, did you direct anybody to print cards?

23 A. No.

24 Q. To send to the American Airline pilots?

25 A. No.

1 Q. Has anybody at ALPA ever told that you they printed
2 cards to send to American?

3 A. No. No one of told me that.

4 Q. Was any money ever budgeted by ALPA in 2001 to try to
5 organize the American pilots?

6 MR. PRESS: He is leading the witness.

7 THE COURT: Yeah, you are leading him. By the way,
8 did ALPA ever indicate to Hunnibell and Clark that they would
9 reimburse them for expenses they incurred in their card
10 campaign.

11 THE WITNESS: Did ALPA?

12 THE COURT: Did ALPA ever indicate on ALPA
13 letterhead or ALPA, from ALPA official to say Clark and
14 Hunnibell that they would reimburse them for their expenses.

15 A. I am not aware of any --

16 THE COURT: You are not aware?

17 THE WITNESS: No.

18 THE COURT: So if somebody showed you a memo or a,
19 or something that said otherwise, you would be surprised.

20 A. Yes, because I know --

21 THE COURT: No, no, you didn't know. You would be
22 surprised if such a document were shown.

23 A. Why surprised?

24 THE COURT: Well, because you are not aware of it.

25 So you would be surprised if somebody showed you an ALPA memo

1 and an ALPA documents that promised to reimburse. You
2 indicator indicated there would are reimbursement.

3 THE WITNESS: Yes, your Honor.

4 THE COURT: Okay. Next.

5 Q. To your knowledge did ALPA ever actually reimburse any
6 expenses to Clark or Hunnibell?

7 A. No, they did not.

8 Q. Let's wrap up with the Continental campaign. I think
9 you told us about some of the, have you told us about the
10 resources that ALPA devoted to trying to pursue the merger
11 with Continental?

12 A. I think I did. I explained that we had two assistant
13 directors, we had a whole bunch of people from
14 communications, legal department, a lot of pilot volunteers,
15 a lot of interim political officers who were assisting in the
16 campaign. Very widespread support.

17 Q. And what cost, can you tell us how much money ALPA
18 incurred during the course of trying to organize or merge
19 with the Continental pilots?

20 MR. PRESS: Again, Judge, relevance.

21 THE COURT: Are you objecting?

22 MR. PRESS: Yes.

23 THE COURT: Say I object.

24 MR. PRESS: I object.

25 THE COURT: Sustained.

1 MR. FRAM: Would it be helpful for me to know the
2 basis of the objection. Could we approach at sidebar for a
3 moment.

4 THE COURT: No. Relevance. Let's assume they paid
5 \$10 million. It is not relevant to the issue in this case.

6 Q. How much time did it take, Mr. Rosen, to pursue the
7 organizing campaign with Continental.

8 MR. PRESS: Same objection.

9 THE COURT: Sustained.

10 Q. All right. Just focusing on American for a moment,
11 after the TWA bankruptcy was announced, with American, did
12 you authorize any steps with ALPA to try to have ALPA
13 represent the American pilots?

14 A. No, I did not.

15 Q. To your knowledge were any affirmative steps taken by Al
16 ALPA to organize the American pilots?

17 A. None were taken.

18 MR. PRESS I object.

19 THE COURT: I will overrule that objection.

20 THE COURT: No steps were taken. Okay.

21 Q. Ron Rindfleish was an employee at ALPA back in 2001. Do
22 you recall him?

23 A. Yes, I do.

24 Q. Was he within, you were at that point heading up the
25 representation department?

1 A. Correct. Yes.

2 Q. Did he also work in that department?

3 A. Yes, he was.

4 Q. Can you tell us what his job responsibilities were?

5 A. He was responsible for receiving input as to inquiries
6 and information concerning pilots and pilot groups that
7 wanted to be organized. So he was the contact point, for
8 those kinds of phone calls.

9 Q. Okay. And you have a sense from how many pilot groups
10 did he get those kind of contacts?

11 A. Will he would get calls from all sorts of pilot groups.
12 It is hard for me to know at any given time but many that we
13 organized would first start off by having a phone call, a
14 conversation with Ron.

15 Q. And to what degree did he circulate within ALPA
16 information about the contacts he would get?

17 A. He would, based on the information, whoa pass it on and
18 we would assess whether or not it was something we wanted to
19 do, we wanted to go after. And it would depend upon
20 circumstances, it would depend upon what he heard.

21 Q. Okay. Did you become aware at at some point that he was
22 getting some communication, some emails and/or phone calls
23 from a couple pilots at American, Clark and Hunnibell?

24 A. Yes, I was aware of that.

25 Q. Was it inappropriate from your perspective as the head

1 of the representation department for Mr. Rindfleisch to be
2 communicating with those pilots, Clark and Hunnibell?

3 A. That was part of his job.

4 Q. Okay. Designations, your Honor there come a point where
5 the National Mediation Board issued a single carrier
6 determination. Do you recall that?

7 A. Yes, I do.

8 Q. Can you remind the jury quickly what a single carrier
9 determination was in the context of the purchase by American
10 of TWA assets?

11 A. At some point when two companies, one is acquired or
12 merged into another company, and there is a filing for a
13 single carrier determination with the board, up until that
14 point you have two bargaining units, and once the board
15 determines that it is a single carrier and they merge the
16 bargaining units, and that is their single carrier
17 determination.

18 Q. Okay. And in conjunction with that determination was
19 ALPA given the opportunity by the National Mediation Board to
20 try to pursue representation of the American pilots?

21 A. Yes.

22 Q. Okay. And were you part of the group making the
23 decision about whether ALPA should pursue the right to
24 represent the American pilots?

25 A. Yes, I was.

1 Q. Tell us what the discussions were, what the thought
2 process was in that regard?

3 A. The thought process really involved assessing the
4 situation and determining whether it made any sense at all to
5 pursue it because it was clear, at least to me, that pursuing
6 it what would not lead to us being successful. Anyway, if we
7 made the showing of interest. First consideration was, you
8 know, did we make the showing of interest. We evaluated the
9 situation, we counted up, you know, different types of ballot
10 -- not ballots.

11 We had the seniority list of TWA, so we had a
12 certain number there plus a certain number of cards, and that
13 tabulation together did not amount to the 35 percent
14 necessary to go forward. So you know, at that point, that
15 was one of the issues.

16 The second issue is even if we got to 35 percent,
17 even if we had had a minimal showing of interest, it was
18 highly unlikely, if not impossible, for us to prevail in that
19 kind of election under those circumstances.

20 Q. Why do you say that? Why do you say it was highly
21 unlikely for ALPA --

22 A. People tend to stay with their, in a situation like this
23 that is very fluid, it is unlikely --

24 MR. PRESS: He is going to speculate about the
25 motive. I object.

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MR. FRAM: He is explaining the thought process.

THE COURT: No, he can't talk about the APA.

There is all kind of evidence on that.

A. Based on my experience. Can I speak to that, your Honor?

THE COURT: No, I sustained the objection.

A. Thank you, your Honor.

Q. We are focusing on the thought process at ALPA, why not to pursue. Can you explain that to us?

A. One of the things that we were concerned about that even if we were successful, and there was no showing of interest so to start off, there was no showing of interest, so that pretty much was the end of the analysis. But even if we were successful, we would have a very divided group and our experience in that type of situation is that it is very -- it doesn't really help, it doesn't really help the pilots to have that kind of divisiveness, it is not something we would pursue.

Q. You said there was no showing of interest. Weren't there 1,500 or so cards that had been signed by American pilots?

A. Even if you added those 1,500 to the 2,300, there were approximately 13,500 American pilots and that still was less than 30 percent.

1 Q. Do you recall becoming aware in early 2002 that some of
2 the pilots at American domiciles were expressing an interest
3 in a potential merger with ALPA?

4 A. I am aware of that.

5 Q. Did that information in early 2002, didn't that
6 information seem so suggest that maybe there was enough
7 interest?

8 A. Not to satisfy the legal requirement of, you know, a
9 showing of interest. You still needed either, you know, the
10 status as the bargaining representative of TWA to bring that
11 number over plus cards. Physical evidence.

12 THE COURT: But you had 30 days in which to get
13 they are evidence, didn't you?

14 A. Yeah, but 30 days would not be adequate to glean any
15 cards like that. We would have needed almost a thousand
16 cards, your Honor. And there is no way we could collect a
17 thousand cards in that period of time.

18 THE COURT: How do you get the number a thousand,
19 where does that come from?

20 A. Well, if we are running to 35 percent, to get 35 percent
21 of 13,500, that is roughly 4,000 something, I am not running
22 the numbers in my head.

23 THE COURT: The TWA pilots, plus 1,500 cards is
24 what?

25 THE WITNESS: 38.

1 THE COURT: And a thousand more.

2 A. It is 28 percent of 13,000.

3 THE COURT: It would be a thousand, the number is
4 smaller than that.

5 A. Seven -- I won't argue with your Honor.

6 Q. Mr. Rosen, based on upon your experience since 19 --
7 1998, in organizing, if you got 36 percent, would that have
8 been enough for ALPA to try to proceed with a representation
9 of the American pilots?

10 A. No, it would not. Even if we had 36 percent we would
11 still have to gain another 15 percent in a total vote of the
12 combined units to get to the, to be the winner of the
13 election.

14 THE COURT: Have you told us all the factors that
15 were considered in the decision not to go after American, all
16 of them? Have you told us all of them?

17 THE WITNESS: Yes.

18 THE COURT: Okay.

19 Q. What percentage of interest, based upon cards and the
20 TWA pilots would you have wanted to see in 2002 to pursue
21 representation of American pilots?

22 A. To actually do a filing? We would have to have a
23 majority.

24 Q. You said you would need 50 percent plus one. How much
25 of an expression of interest would you want to see to move

1 down that road to try to get 50 percent?

2 A. You mean additional cards from American, you are saying?

3 Q. Yes?

4 A. A substantial number. Substantial number.

5 Q. Can you give us a sense of what that substantial number
6 would be?

7 A. Well, I think that our chances of winning would be based
8 on having almost 70 percent of the combined total between TWA
9 and cards from American. So I, whatever that number is, if
10 we had about that much, then we would have a really good shot
11 at winning.

12 Q. Okay.

13 MR. FRAM: Thank you, I have no further questions
14 on direct, your Honor.

15 THE COURT: Cross examine.

16 MR. PRESS: Thank you, your Honor.

17 THE COURT: Mr. Press.

18 CROSS EXAMINATION.

19 BY MR. PRESS:

20 Q. Mr. Rosen, as part of your job responsibilities,
21 collective bargaining, or when you were with ALPA -- I am
22 sorry. Collective bargaining came within your department's
23 gambit, right?

24 A. That's correct.

25 Q. And you were the head the department, the representation

1 department, for how many years?

2 A. From 1984 to 2003.

3 Q. And that is when you retired from ALPA?

4 A. That's correct.

5 Q. And after that you went for some, you worked for a
6 consulting firm today?

7 A. We formed up an international pilots services
8 corporation some time in the nineties, and I became the
9 director of the International Pilot Services Corporation, a
10 subsidiary of ALPA.

11 Q. And that is a company you work for today?

12 A. That is.

13 Q. A subsidiary of ALPA?

14 A. That's correct.

15 Q. The company you worked for is owned by ALPA?

16 A. The union I work for.

17 Q. Okay.

18 A. It is a union.

19 Q. And currently you are involved in a project, not sitting
20 here today obviously, but there is a project underway where
21 you are negotiating a contract on behalf of the American
22 pilots, aren't you?

23 A. That's correct.

24 Q. Now, getting back to this matter here, are you familiar
25 with ALPA's written policies on collective bargaining?

1 A. Somewhat. I would have to review them again. I haven't
2 looked at them.

3 Q. I asked asked you the question, collective bargaining is
4 what you do?

5 A. Yes, I realize that. I still would like to look at them
6 and refresh my memory.

7 THE COURT: What is the number?

8 Q. J 249. The J, Mr. Rosen, means a joint exhibit. Do you
9 recognize it?

10 A. Yes, I do.

11 Q. What is it?

12 A. This is section 40 of our administrative manual I think
13 is the document that it comes from. And it is entitled
14 collective bargaining.

15 MR. PRESS: I move for the admission of J 249,
16 Judge.

17 MR. FRAM: No objection, Judge.

18 THE COURT: Okay. J 249 in evidence.

19 MR. PRESS: Can we pull up the first page. Can you
20 highlight the top line?

21 Q. This says what, section 40, right. Collective
22 bargaining. It is section 40 of this administrative manual,
23 right?

24 A. That's correct.

25 Q. Which is, ALPA's policy manual is big, isn't it?

1 A. I don't know how big it is.

2 Q. Well, let's stick with this, this is what you know,
3 right? I want to refer you to page 8 on ratification. When
4 you get there let me know.

5 A. Page 48?

6 Q. 40 - 8. I am sorry. I said eight. And just to lay
7 some ground work here, the policy on collective bargaining,
8 this is ALPA's policy on negotiating for a collective
9 bargaining agreement with an employer?

10 A. Yes.

11 Q. And you are aware that the TWA pilots did that in April,
12 2001, as part of the whole bankruptcy process?

13 A. Yes.

14 Q. And they entered into a new collective bargaining
15 agreement with their new employer, TWA LLC.

16 MR. FRAM: I object. This is well beyond the scope
17 of the direct.

18 THE COURT: I am going to allow it.

19 Q. You are aware that happened?

20 A. Yes.

21 Q. Now, referring to page eight on ratification. Can you
22 read ALPA policy on ratification?

23 Q. Can you read it out loud?

24 A. The conclusion of an agreement shall, at the discretion
25 of the individual Master Executive Council, be subject to MEC

1 or membership ratification.

2 Q. And that means that if the MEC wants to put the
3 collective bargaining agreement out to vote amongst all the
4 members, the MEC can do that?

5 A. That's correct.

6 Q. If they want to?

7 A. Yes.

8 Q. And aren't you aware that the TWA MEC in fact asked to
9 do that for this new collective bargaining agreement?

10 A. No.

11 Q. You weren't aware of that?

12 A. No, I am not aware of that.

13 Q. Sticking on that same page, section E talks about
14 professional negotiators. And are you there?

15 A. Yes, I am.

16 Q. ALPA has a whole team in Washington, D.C. or Herndon,
17 there is a whole team of professional negotiators, isn't
18 there?

19 A. No.

20 Q. There isn't?

21 A. No. Let me explain.

22 Q. I didn't ask for an explanation.

23 A. What?

24 Q. I didn't ask for one. Mr. Rosen, I thought there was a
25 team of like 40 professional negotiators?

1 A. You said located in Herndon or Washington. That is not
2 where they were. I wanted to clarify how it works.

3 Q. I want to be fair. Where are they?

4 MR. FRAM: Pardon me. Counsel is talking over the
5 witness. I object.

6 THE COURT: Where are they?

7 A. We have a staff that is distributed around the country.
8 Most of the professional negotiators are actually located
9 where the Master Executive Council offices are. For example,
10 in TWA's case, they had a St. Louis office. David Holtzman
11 was the resident contract administrator located there. So
12 there are a handful of negotiators or staff members of the
13 representation department in Herndon. Only a handful. Most
14 of them are out so that they could directly represent and
15 work with the MEC's, the officers, and the negotiating
16 committees.

17 Q. So Mr. Holtzman was my client's professional negotiator?

18 A. That's correct.

19 Q. All right. If you go to the next page, page 9 at
20 Vermont top there is a section about what are called first
21 contracts, right?

22 A. This is 49?

23 Q. Page 9 at the top, 6 I, on first contracts.

24 A. I see it.

25 Q. Can you --

1 A. The president's department shall monitor all aspects of
2 preparation for and negotiation of first contracts for a
3 pilot group to assure that this is accomplished in an
4 efficient and expeditious manner.

5 Q. And that was ALPA's policy at the time, right?

6 A. That's correct.

7 Q. Now, you know for a fact that the TWA pilots, their
8 contract with this new company, TWA LLC, was in fact a first
9 contract, wasn't it?

10 A. I don't consider it a first contract.

11 Q. Well, this is a brand new airline?

12 A. Even so it was a transition agreement from an old
13 contract to whatever the American contract to be. So I would
14 not categorize that as a first contract.

15 Q. How about this, was it a concessionary -- were the TWA
16 pilots involved in a concessionary negotiation concerning
17 their scope?

18 A. Concerning there scope, yes, the company was requesting
19 relief from their scope. So that would be concessionary in
20 that regard.

21 Q. Are you aware what ALPA's policy was when it came to
22 concessionary negotiations?

23 A. I have to review it again.

24 Q. Go to page 21. You will come to part six, crisis and
25 concessionary negotiations. Are you there?

1 A. Yes, I am.

2 Q. Okay. I want, if you could look at that and get
3 yourself comfortable with the fact that yes, this was ALPA
4 policy on that subject. Then I will have some questions.

5 A. Go ahead. I read it quickly.

6 Q. I want you to get comfortable with it. Yes, we are
7 looking at the right document.

8 A. What?

9 Q. On concessionary negotiations?

10 A. These are the guidelines that are provided for proofs,
11 they are guidelines, they are not guarantees or anything like
12 that. But they are guidelines. They are not mandatory.

13 Q. If you go to page 22?

14 A. Yes.

15 Q. Paragraph 2, there is a list of three things that ALPA
16 shall provide to the MEC. Are you there?

17 A. Yes, I am.

18 Q. A, coordination directly through the president's office.
19 Right?

20 A. Yes.

21 Q. Which means that the TWA pilot concessionary negotiation
22 concerning their scope should have been coordinated through
23 Duane Worth's office. Right?

24 A. Well, I don't agree with your interpretation of that. I
25 am part of that process of coordination with the president's

1 office. I don't want to quibble with you over that.

2 Q. Okay. B. ALPA shall provide staff support for costing
3 the financial impact of various concessions. Right? That
4 didn't happen here either, did it?

5 A. They had they had financial support. They had an
6 outside financial adviser that we retained for their benefit
7 plus we had people from the economic and financial analysis
8 department assigned to it.

9 Q. Can you point to one piece of paper in this courtroom
10 that shows any work by anybody at ALPA to come up with
11 financial impact of a scope waiver.

12 MR. FRAM: Your Honor, I object. That is not a
13 fair question. We have lots of paper. The witness, we are
14 beyond the scope of direct. It would take the witness I am
15 sure time to find the document.

16 THE COURT: I am going to sustain the objection.
17 The words, a piece of paper in this courtroom, is somewhat
18 vague.

19 Q. Mr. Rosen, you are not aware of any actual work done by
20 anybody to assess the financial impact?

21 A. I am not aware of anyone doing it in any in any case.
22 That is something that is, I don't know how you would do
23 that.

24 Q. And the last thing that ALPA is supposed to provide the
25 MEC is staff support for determining the financial condition

1 of the concerned carrier, in this case it would have been
2 TWA?

3 A. That's correct.

4 Q. You are not aware of any work done along those lines
5 either, are you?

6 A. They had outside financial adviser. Michael Glanzer.

7 Q. You are not aware of anything Mr. Glanzer did?

8 A. Am I personally aware? I am sure he was involved in
9 doing exactly that.

10 Q. Mr. Rosen, this says staff support, not an outside
11 consultant?

12 A. As I said these are guidelines. The fact that we
13 retained some very prominent outside analysts to provide the
14 support was above and beyond what was provided by economic
15 and financial analysis. Bob Christie was working with these
16 people.

17 Q. Mr. Rosen, you mentioned that these, this administrative
18 manual is more along the lines of a guideline?

19 A. Not it is more a long. It is a guideline. It is not
20 mandatory policy.

21 Q. It is not mandatory?

22 A. That's correct.

23 Q. It is discretionary?

24 A. That's correct.

25 Q. And that would apply to every section in it?

1 A. I would have to read the whole thing. I think yes, it
2 is guidelines for the whole thing.

3 Q. All right. And one section of the administrative manual
4 deals with jumpseat privileges, right?

5 A. You want to point me to it, please?

6 Q. No, can you sit here, can you just recall?

7 A. I don't remember whether it was in the administrative
8 manual or not. I know there is a jumpseat policy.

9 Q. There is some evidence of it. Actually your lawyers
10 brought it out. I don't want to say something that you are
11 not comfortable agreeing with. You are aware that there was
12 a jumpseat policy at ALPA?

13 A. Yes.

14 Q. And I think you told me in the deposition we took of you
15 several years ago that that policy was the reason that the
16 TWA pilots could not engage in the jumpseat war with American
17 pilots?

18 A. Well, I don't know how -- you are wording it differently
19 than I think I stated in my deposition.

20 Q. Tell me then.

21 A. If you want to quote from my deposition, that is fine.

22 Q. I would rather just do this smoothly in the way we are
23 both communicating well?

24 A. Sure.

25 Q. Tell me why then ALPA denied the TWA pilots request to

1 engage in a jumpseat war with American?

2 A. I think as I explained in the deposition, it is an
3 apolitical policy. We do not, and it is based on reciprocity
4 and the overall negative impact on everyone would far
5 outweigh any advantage or anything that would be gained by
6 doing that in some kind of retaliatory fashion, and I thought
7 it would make things worse, would be my reevaluation.

8 Q. That policy is just a guideline, it is not a hard and
9 fast rule?

10 A. That is the guideline we followed but it is not
11 mandatory.

12 Q. In fact, Mr. Rosen, you know from your experience at
13 ALPA that ALPA has in fact used the jumpseat to punish pilots
14 it was upset with?

15 A. I am not aware of that.

16 Q. You are not aware of that?

17 A. No.

18 Q. Aren't you aware that the Eastern pilots went on strike
19 in 1989 for about a year?

20 A. I am aware of that.

21 MR. FRAM: I object. That is before the policy.
22 This is misleading.

23 THE COURT: I will allow it. Go ahead. What is
24 your next question?

25 Q. You are aware that there were some Eastern pilots that

1 crossed the picket line, they were referred to as scabs,
2 right?

3 A. That's correct.

4 Q. You are aware that these scabs in fact were precluded
5 from ALPA jumpseats?

6 A. I am aware of that.

7 Q. Right. And you are aware that in fact there was a list
8 of all these scabs that ALPA produced and distributed to all
9 of its members, right?

10 A. No, I am not aware of that.

11 Q. You are not aware of that?

12 A. No.

13 Q. Aren't you aware there was a lawsuit over that and you
14 provided testimony, I think?

15 A. Yeah, that we didn't have a list.

16 Q. You didn't have a list?

17 A. We did not have the list. That was the testimony.

18 Q. Isn't it true, Mr. Rosen, that in 1991 ALPA produced and
19 distributed 50,000 copies of the scabs list, the final
20 publication was entitled the scabs of Eastern, of the strike
21 of 89. Aren't you aware of that?

22 A. I don't remember.

23 Q. Can I show you?

24 A. Sorry.

25 Q. I want to show you.

1 MR. FRAM: Your Honor, I object under 403.

2 THE COURT: No, I will allow it.

3 MR. FRAM: Can I see you at sidebar?

4 THE COURT: I am going to allow it. The jumpseat
5 issue is clearly in the case. I will allow it. Go ahead.

6 Q. I am going to hand you something that I want you to look
7 at, first of all, what is it, are you familiar with this?

8 MR. FRAM: May I have a copy?

9 MR. PRESS: I am sorry.

10 THE COURT: What is it marked?

11 MR. PRESS: It is not marked, Judge. It is just, I
12 am just using it to refresh memory for now.

13 A. I what are you pointing me to? I apologize --

14 Q. Have you ever seen this case I have landed you?

15 A. Yes.

16 Q. Oh. This is a published opinion of --

17 A. I said yes.

18 Q. Dun versus ALPA?

19 A. Yes.

20 Q. You are familiar with in lawsuit, right?

21 A. Goes back a long time. I don't recalling it. I would
22 have to read it, your Honor.

23 THE COURT: Well, if you want to read it, I am
24 certainly going to ask him to ask questions on it.

25 MR. PRESS: I don't want to sit and have you read

1 in front of the jury.

2 THE COURT: If you want to know about the list,
3 forget -- just stick with what he knows about the list.

4 Q. You are denying that ALPA produced and distributed a
5 scab list?

6 A. No, you have refreshed my recollection. I would like an
7 opportunity to review it, and I appreciate your refreshing
8 it. I apologize if I gave incorrect information on that.

9 THE COURT: Okay. Your recollection is refreshed.

10 Q. In this is refresh refreshing your memory in fact ALPA
11 did produce and distribute a scab list?

12 A. If that is what it says, that is what it says. That is
13 why I wanted to review it.

14 THE COURT: Let him look at it.

15 Q. Please --

16 THE COURT: Go ahead and a look at it.

17 Q. I show you --

18 THE COURT: Let him look at it.

19 MR. PRESS: I am sorry, Judge.

20 (Pause)

21 A. I see the paragraph you highlighted which clearly states
22 in 1991 ALPA produced and distributed 50,000 copies of the
23 scab list. This final publication was entitled the scabs of
24 Eastern, of the strike of '89.

25 THE COURT: The question is do you recall that

1 now?

2 A. I do recall it now.

3 THE COURT: Okay.

4 Q. So as a matter of fact, ALPA did produce and distribute
5 a scabs list of these Eastern pilots, right?

6 A. I think you asked me that. Yes.

7 Q. And part of the intention of doing that was for that
8 list to be taken into cock pits by ALPA pilots so they on on
9 would know who the scabs were that might want to sit in the
10 jumpseat. That was part of the reason?

11 A. I can't speak to the intent.

12 Q. That is fair enough.

13 Q. Following up on some of the judge's questions about Mr.
14 Rindfleisch. You were aware at the time, this is 2001, on
15 '02, that he was communicating directly with American pilots
16 about rejoining ALPA?

17 A. He was communicating with American pilots. Who were
18 expressing an interest in ALPA.

19 Q. And two in particular had undertaken this card campaign,
20 Mr. Hunnibell and Mr. Clark, right?

21 A. Yes.

22 Q. You know for a fact Mr. Rindfleisch had regular
23 communication with those two men.

24 A. There was frequent emails exchanged between the three of
25 them.

1 Q. He copied you on many of those emails, didn't he?

2 A. He did.

3 Q. I want to show you 147 VV.

4 THE COURT: Did you say BB?

5 MR. PRESS: VV.

6 MS. RODRIGUEZ: Vivian, Vivian.

7 THE COURT: VV.

8 MR. PRESS: Victor Victor.

9 THE COURT: Victor Victor, okay.

10 Q. Mr. Rosen, before we look at that email?

11 A. Yes.

12 Q. Have you, these are emails from Mr. Rindfleisch, have
13 you reviewed these binders of emails?

14 A. I have reviewed them.

15 Q. Okay. And this thing that I have got on the monitor
16 here is part of this?

17 A. I guess you would say I am not sure I read every single
18 one of them but there are many, many emails.

19 THE COURT: By the way. P-147 in its entirety, I
20 have marked in evidence.

21 MR. PRESS: It is.

22 Q. This email we are looking at, first of all the date is
23 what?

24 A. July 26, 2001.

25 Q. It is Mr. Rindfleisch forwarding an email to you and

1 many ALPA officials, right?

2 A. Yes.

3 Q. And the forwarding information, where Mr. Rindfleisch
4 got this from, that has been deleted from the email, right?

5 A. I am not following you.

6 Q. Look at the subject line, it says FW, AA to ALPA
7 stickers. Right. That means this email was forwarded to Mr.
8 Rindfleisch by somebody else.

9 A. Yes. I see the FW.

10 Q. We don't know who forwarded it from looking at this
11 email, do we?

12 A. I don't know.

13 Q. But you can read the context of it, Mr. Rosen, and agree
14 it came from an American pilot?

15 A. The signature is an American pilot. The name.

16 Q. Okay. And he is talking about some stickers, and his
17 last, well, it sure would be nice if we could highlight that.
18 Can you read that, Mr. Rosen?

19 A. It sure would be nice of ALPA to produce some of these
20 by a professional outfit. After all our cause is their
21 cause.

22 Q. This is some American pilot asking ALPA to produce
23 stickers that would be used in conjunction with their card
24 campaign, right?

25 A. It is asking for help in producing some stickers.

1 Q. And when you received this, that is what you understood
2 back in July of 2001, right?

3 A. Well, I am not sure exactly when I read this email. I
4 just don't know. But in any event, it says what it says.

5 Q. You will agree with me that it would have been highly
6 inappropriate for ALPA to have produced the stickers
7 requested in this email?

8 A. It would have been inappropriate, yes.

9 Q. Why?

10 A. Because we weren't engaged in any campaign, and we had
11 no budget to do anything for any campaign relative to
12 American Airlines.

13 Q. Did, are you aware of any follow-up from Mr. Rindfleisch
14 to these pilots to say we can't do that, it would be
15 inappropriate?

16 A. I am not aware of it.

17 Q. Now, you are aware this July 26 date, that came three
18 days after John Clark and Mark Hunnibell were actually in
19 Washington for meetings with ALPA, right?

20 A. I don't know when they were in Washington.

21 Q. You weren't part of those meetings in July, 2001?

22 A. I don't recall.

23 MR. PRESS: 147, AAA.

24 THE COURT: A's?

25 MR. PRESS: A's.

1 Q. This is an email, Mr. Rosen, next day, July 27, 2001.

2 Do you see that?

3 A. Yes, I do.

4 Q. This again is an email that Mr. Rindfleisch received
5 from an American pilot that he has forwarded to you and the
6 same group of ALPA officials, right?

7 A. How do we know it is from an American pilot? I don't
8 know.

9 Q. I can give you that evidence if you want?

10 A. Okay. It doesn't show on it. I see what it is. But I
11 don't know where it came from.

12 Q. If you go to 147 EEE?

13 MR. PRESS: Is there a way to put both on the
14 screen?

15 Q. 147 EEE is an email from Terry M to Ron Rindfleisch,
16 right?

17 A. Yes, that is what it says.

18 Q. He has attached what is called endorsement update on the
19 second page, right?

20 A. Yes.

21 Q. And that endorse meant update is from Mark Hunnibell to
22 ALPA support list, right?

23 A. I am not following you. I am sorry.

24 Q. Oh.

25 MR. PRESS: We need the second page of EEE.

1 That is why I couldn't follow you.

2 Q. Yeah, you don't have the hard volume. Page 2.

3 Q. See that. Mark Hunnibell to ALPA support list with an
4 endorse minute up indict.

5 A. I see that, yes.

6 Q. I just want you to compare that page to this other one
7 we looked at before, AAA, and you can confirm that that is
8 the same message that was forwarded -- that Mr. Rindfleisch
9 forwarded to you?

10 A. Looks the same to me.

11 Q. Right. So what this endorsement update is, it is update
12 of 10 new American pilots who are on board with the campaign,
13 right?

14 A. Yes.

15 Q. So this is just an example of Mr. Rindfleisch giving you
16 a blow-by-blow account of how the campaign is going?

17 A. He is giving me information about what is going on
18 there, yes.

19 THE COURT: Well, it is a campaign.

20 THE WITNESS: The campaign --

21 THE COURT: There is some, obviously the pilots and
22 American are engaging in some kind of effort.

23 THE WITNESS: You are right.

24 THE COURT: On behalf of ALPA.

25 A. Yes.

1 Q. And this email. I am sorry?

2 THE COURT: Go ahead.

3 Q. This email I have shown you with this update from July,
4 this wasn't the only up did it you received? You received
5 regular updates about the campaign from Mr. Rindfleisch?

6 A. I received updates from Mr. Rindfleisch.

7 THE COURT: What was the relationship between you
8 and Rindfleisch, were you his boss?

9 A. Ultimately, yes.

10 THE COURT: You were his boss?

11 A. He was within my department, yes.

12 Q. Go to 148 FF. I have jumped forward now to November 30,
13 '01.

14 Q. Mr. Rosen, would you prefer to have hard copies?

15 A. No, I can see. My eyes are a little --

16 Q. This is an email dated November 30, '01, from Mr.
17 Rindfleisch to you and the same group of officials at ALPA,
18 right?

19 A. Yes.

20 Q. And this you are aware of the timing of things, this is
21 after the APA had imposed this cram-down on the TWA pilots,
22 right?

23 THE COURT: Wasn't the cram-down November 8,
24 supplement CC, November 8.

25 THE WITNESS: It is what it is.

1 THE COURT: I am asking you when is the cram-down.

2 THE WITNESS: Wouldn't refer to it as a cram-down.

3 THE COURT: Supplement CC, the agreement between.

4 A. It was early November, you are right.

5 THE COURT: November 8.

6 THE WITNESS: Right.

7 THE COURT: I don't think there is any dispute on
8 that.

9 Q. I wanted him to get comfortable, this email we are
10 looking at was after that, right?

11 A. Yes.

12 Q. And this again is an email forwarded to Mr. Rindfleisch
13 by somebody named John. Do you see that?

14 A. John. Yeah, I see the John, yeah.

15 Q. And you know from talking with Mr. Rindfleisch that this
16 John was John Clark, right?

17 A. No, I do not know that.

18 Q. Anyway, this John, he says what at the top, the first
19 sentence?

20 Q. Can you read that?

21 A. Note the fun that seems to be going on at the TWA MEC.

22 Q. Did you instruct Mr. Rindfleisch in any way to take some
23 sort of action concerning this sarcastic email when it comes
24 to the TWA pilots?

25 A. No, I didn't take any action with regard to this email.

1 Q. Can we look at one --

2 THE COURT: On this email what do you think is
3 being said here, with this "guys". What did you, this, you
4 were a recipient of this. A lot of people. In fact, the
5 whole executive staff of ALPA is a recipient of this.

6 A. The staff is, yes.

7 THE COURT: What did you think Rindfleisch was
8 saying here?

9 A. I think he was referring to the fact that TWA internally
10 had political skirmishes and they were involved in yet
11 another one of those --

12 MR. FRAM: Pardon me. I think the email is from
13 John, not from Mr. Rindfleisch. I think he just forwarded
14 it.

15 THE COURT: He is forwarding it.

16 THE WITNESS: Yes. That's right.

17 MR. PRESS: Your Honor.

18 THE COURT: Yes.

19 MR. PRESS: 148, P P. That is another email.

20 Q. This one is dated December 10 from Mr. Rindfleisch to
21 you and the same group of ALPA officials, right?

22 A. Yes.

23 Q. What is being forwarded is an update from the American
24 pilots union concerning the Bond Amendment. Do you see that
25 in the middle?

1 A. I do.

2 Q. Bond Amendment finally takes. What is the first word of
3 the message from the American pilots?

4 A. Ugh.

5 Q. So here we have American pilots reacting negatively to
6 something quite positive for the TWA pilots?

7 A. That would be positive for the TWA pilots.

8 Q. You didn't give Mr. Rindfleisch any directions on how to
9 respond to these American pilots and their attitude, did you?

10 A. This comes from who?

11 A. This from Denny Breslin.

12 Q. To your employer, Mr. Rindfleisch?

13 A. The last update. No, I did not give him any
14 instruction. .

15 Q. The Judge asked you questions about the pilot, the
16 American pilot organizers expenses, and whether or not they
17 were reimbursed. I want to look at what is already, well,
18 it is 148 D.

19 148 D. Is this an email you are familiar with?

20 A. Yes.

21 Q. Dated October 14, Mr. Mugerditchian and Mr. Rindfleisch,
22 right?

23 A. Yes.

24 Q. He says, "As we discussed several months ago in person
25 and again on the phone more recently, Mark and I are filing

1 this reimbursement request." Do you see that?

2 A. Yes, I do.

3 Q. Mr. Rindfleisch as we saw with these other emails, he
4 forwarded this email to you and the same ALPA officials. Do
5 you recall that?

6 A. I am sure you have it. I mean.

7 Q. I don't, actually?

8 A. I don't remember seeing this.

9 Q. All right.

10 A. That is why I asked you for it.

11 Q. Well, do you remember Mr. Rindfleisch shortly after he
12 received this message going to you and seeking your advice on
13 how to respond?

14 A. No, I don't recall.

15 Q. Is that to say it didn't happen, or it might have
16 happened?

17 A. No, I just, I don't have recollection of that. That is
18 what it is saying.

19 Q. Now, if we go to 148 H. That is another email, 148 H.
20 This email is dated October 31, '01, at the top, that is its
21 date. But in the middle, underneath that you will see the
22 message from Mr. Rindfleisch to you and the ALPA officials
23 again, right?

24 A. Yes.

25 Q. It is dated October 30, '01?

1 A. Yes.

2 Q. He is forwarding an email from this John again,
3 anonymous John?

4 A. John. Yes.

5 Q. And are you comfortable now looking at this saying yes,
6 that is John Clark. That is the John?

7 A. I am.

8 Q. You are comfortable agreeing with that?

9 A. Yes.

10 Q. Mr. Clark, he is talking about things up up there in the
11 first paragraph. In the second paragraph he concludes it by
12 saying what?

13 Q. Can you read that?

14 A. Also?

15 Q. Yes?

16 A. Also, I would still like some help --

17 Q. No, the last sentence, I am sorry.

18 A. I also look forward to our reimbursement.

19 Q. That message was forwarded to you in late October of
20 '01. And you understood at that time that he was talking
21 about getting his expenses reimbursed by ALPA?

22 A. Yes.

23 Q. And you gave, are you telling this jury you gave no
24 directions to Mr. Rindfleisch on how to respond to this?

25 A. That's correct.

1 Q. You will agree with me it would have been, providing
2 stick, if providing stickers would have been inappropriate,
3 providing cash would have been really inappropriate?

4 A. It would it would have been.

5 Q. Can we go to 148 KK.

6 Now we have jumped ahead in time to December 5,
7 right?

8 A. Yes.

9 Q. Mr. Rindfleisch is sending in an original message of his
10 own to John Clark and Mark Hunnibell concerning their
11 expenses. Do you see that?

12 A. Yes.

13 Q. And are you aware, because again I don't have it in the
14 binder, if I did I would show it to you, but do you know, can
15 you agree that this message was forwarded to you?

16 A. I don't recall.

17 Q. Well, what does Mr. Rindfleisch, your employee, say.
18 Guys, can you read that?

19 A. Yes, I can.

20 Q. Please do.

21 A. Guys, please forward to me the original receipts. You
22 may want to make a copy for yourself, of your expenses that
23 you emailed to me on October 14. I apologize for the delay.
24 But as soon as we can get the receipts we can get checks cut.
25 Also include your three current addresses, including Dan

1 Hall, that we will mail the checks to.

2 Q. Okay. And you were aware because Mr. Rindfleisch and
3 you talked about it that he was going to send this message,
4 right?

5 A. No. I didn't say we talked about it. I never said that.

6 Q. I think in answer to one of the judge's questions you
7 said you would be surprised if there was communications
8 about reimbursing expenses, right? Are you surprised to see
9 this?

10 A. I don't remember seeing this.

11 Q. Now, this date, December 5. The date that Mr.
12 Rindfleisch, your employee, promised to pay these guys. You
13 know for a fact that is the same day that John Clark
14 delivered his cards in Las Vegas to Duane Woerth and Jerry
15 Mugerditchian. You know that?

16 A. I do not know that, whether it was the same day or not.

17 Q. Now, if you go to email 148 U U, are you there?

18 A. Yes, I am.

19 Q. This is nine days later, December 14. Ron Rindfleisch
20 forwards on to you and the other ALPA officials there, you a
21 message from John Clark, correct?

22 A. Yes.

23 Q. And Mr. Clark and his message to Ron says I will get the
24 receipts to you when I get to that on my to-do list. Do you
25 see that?

1 A. Yes, I do.

2 Q. And you understood right then that day you received this
3 or when ever you read it that he was talking about receipts
4 for the reimbursement request that had been promised to be
5 met nine days earlier. You understood that is what this was
6 in reference to?

7 A. I understand that that is what it is.

8 Q. And then you didn't take any action to stop that, did
9 you?

10 A. No, I did not.

11 Q. Can he we go to exhibit 148 XX. Actually, let's move
12 on. 148 GGG. Are you there, Mr. Rosen?

13 A. Yes, I am.

14 Q. This is an email from Mr. Rindfleisch to Mark Hunnibell
15 and John Clark dated December 21, '01. Correct?

16 A. Yes, it is.

17 Q. Was this email forwarded to you?

18 A. I don't recall. It may have been.

19 Q. Before he says, Go Packers. Mr. Rindfleisch writes
20 what, again?

21 Q. Can you read that?

22 A. Before? Have a great holiday and healthy new year and
23 go Packers. Rino.

24 Q. Before that?

25 A. Again, I must admit to you three guys that we will

1 reimburse you for the expenses you already incurred when we
2 re receive them.

3 Q. And you knew at the time that Mr. Rindfleisch was
4 communicating a long those lines to these American pilots,
5 didn't you?

6 A. Yes.

7 Q. And you didn't do anything to stop him, did you?

8 A. No.

9 Q. Now, what happened, you testified I think in response to
10 Mr. Fram's question that these expenses, although there was a
11 promise to pay, they weren't paid, right?

12 A. Yes. That's correct.

13 Q. That was your testimony. Isn't it a fact that at around
14 this time you became aware that some TWA pilots, you became
15 aware some TWA pilots had found out about ALPA's involvement
16 with the card campaign and had made a public complaint about
17 that, right at this time, right?

18 A. What are you referring to.

19 Q. The AWRF?

20 A. I am aware of that.

21 Q. They made a public complaint about what they perceived
22 to be ALPA's conflict of interest, right?

23 A. Yes.

24 Q. And that complaint, ALPA found out about that the same
25 time this was going on, late December, '01, right?

1 A. I don't know exactly when ALPA found out about the
2 filing. There was a letter filed, written to the National
3 Mediation Board, I think you are referring to. So what is
4 the date of the letter.

5 Q. I don't have it. That is okay. Now, I want to talk
6 about, we can take that down.

7 These campaign cards that got delivered to ALPA,
8 the Judge asked you some questions about them. You saw them
9 at some point, right.

10 A. No, I did not.

11 Q. Well, you just testified there was 1,500 of them or
12 something like that?

13 A. That doesn't mean I saw them.

14 Q. Well, what do you rely on for that information?

15 A. Someone else told me the number.

16 Q. Who was that?

17 A. I don't recall. It may have been clay. Clay Warner.

18 Q. Clay Warner. And he testified yesterday. Did he say
19 that he had the cards with him?

20 A. No, he did not.

21 Q. Have you talked to anybody at that union that every said
22 I have the cards, or gave you some impression that they knew
23 where the cards were?

24 A. No.

25 Q. But Mr. Warner's conversation with you concerning the

1 number of cards, that was in conjunction with this decision
2 about whether or not to seek an election, right?

3 A. That's correct.

4 Q. That was in the March, '02, timeframe?

5 A. Yes.

6 Q. So at that point in time ALPA still had the cards,
7 right?

8 A. I don't know whether we had the cards or not at that
9 point in time.

10 Q. But Mr. Warner --

11 A. I am not sure we had the cards as that point. We may
12 have had some cards. We may have had not all those cards. I
13 don't know what we had or didn't have.

14 Q. But Mr. Warner was representing to you that there were
15 1,500 cards?

16 A. Yes, he was.

17 Q. You knew for a fact from your communication was Mr.
18 Rindfleisch that cards were continuing to come in from the
19 American pilots?

20 A. Come in to the American pilots, not come to us, but come
21 in to the American pilots.

22 Q. That was my question?

23 A. What.

24 Q. They that they were still collecting cards?

25 A. I don't know exactly when they stopped coming, when they

1 reached that number. I really can't tell you that.

2 Q. But a decision was made by ALPA not to seek an election,
3 correct?

4 A. Yes.

5 Q. That decision was made that we looked at a letter, March
6 18, '01, or '02?

7 THE COURT: '02.

8 Q. That sound about right?

9 A. Do you have it?

10 Q. We can, I can -- yeah, we do. I don't want to spend the
11 time on it. It is in evidence. Can we go to P 31. This is
12 an email dated March 18, '02, from Mr. Rindfleisch to you and
13 the same group of ALPA officials, right?

14 A. Yes.

15 Q. And he is forwarding something called ALPA merger MIA
16 document. Right?

17 A. Yes, he is.

18 Q. And you know -- the attachment is not there. If I had
19 it I would show it to you. But you are familiar enough with
20 these facts, Mr. Rosen, to tell this jury what that was was a
21 merger resolution passed at APA's Miami base.

22 A. Was it passed?

23 Q. Or introduced.

24 A. I don't think it was passed. And it is only out on the
25 base. So.

1 Q. Let me start --

2 A. It was some resolution that was introduced at the Miami
3 meeting that I am aware of. That is it. And this is on
4 what, March 18.

5 Q. Right. As of March 18 ALPA had in its possession a
6 motion, what did you call it?

7 A. A resolution.

8 Q. A resolution to do what?

9 A. To, looks like to form up some kind of merger process, I
10 think is what they were looking toward doing, was to then
11 take that to their board and have some, they would need to
12 take that to their board, and represent more than a
13 resolution that wasn't passed.

14 Q. But this was a merger between the American pilots union,
15 this APA and ALPA?

16 A. Yeah, but only from the Miami domicile on a resolution
17 that wasn't passed. So what does it amount to?

18 Q. I am just what it was. No witness before you could say
19 what it was. Now we know what it is.

20 A. Right.

21 MR. FRAM: Your Honor, I object. I really object
22 to counsel's comment. That wasn't the testimony.

23 THE COURT: Ignore his comment on what the prior
24 testimony was. This witness says he remembers it. That is
25 his testimony.

1 A. Thank you.

2 Q. Mr. Rosen, this merger between APA and ALPA, that is
3 what ALPA wanted?

4 A. I don't know what you are talking about. In this
5 context ultimately yeah, in the long range, in the scheme of
6 things, of course, that would have been nice to do in the
7 future. But this had no bearing on that at this point. Nor
8 did it go in any way towards the showing of interest. I
9 don't understand the point you are trying to make. I am
10 sorry, counsel.

11 Q. Can we look at exhibit 148, 5 O's?

12 THE COURT: I am sorry.

13 MR. PRESS: 148, OOOOO.

14 THE COURT: That is in evidence.

15 MR. PRESS: It is.

16 Q. This is just the first page. It is a multi-page
17 document, Mr. Rosen, which I am going to give you?

18 A. Yes.

19 Q. So you have the whole thing?

20 A. Thank you.

21 Q. Mr. Rosen, this is an email from Ron Rindfleisch to you
22 and the same group of ALPA officials, this one is dated April
23 4, 2002, correct?

24 A. Yes.

25 Q. He is forwarding to you an email from Mark Hunnibell

1 that he received on April 3rd. Right?

2 A. Yes.

3 Q. And April 3rd you know is the day that ALPA lost its
4 bargaining rights over the TWA pilots, right?

5 A. Yes.

6 Q. And what Mr. Hunnibell has attached to his email are the
7 pages following the first page that I have given you?

8 A. Yes.

9 Q. And those are, well, the first collection of paperwork
10 that is a resolution sim already to this Miami thing you
11 talked about except it is a resolution from the American
12 Dallas base?

13 A. Yes.

14 Q. Again, it is a resolution that is, to merge the two
15 unions?

16 A. Well, to form up a merger committee to look at exploring
17 merging the two unions.

18 Q. Are you familiar enough with American Airlines to agree
19 with me that the American pilots Dallas base was the largest
20 base as far as number of pilots?

21 A. Yes, it is.

22 Q. How does Mr. Hunibell end his message to Mr.
23 Rindfleisch. Do you see that, cheers?

24 A. You mean the cheers or above the cheers?

25 Q. Yes.

1 A. Above the cheers?

2 Q. No, the cheers. Do you see that?

3 A. Yes.

4 Q. And here you are at the end being rewarded by Mr.
5 Rindfleisch's efforts, aren't you?

6 A. I don't accept that.

7 MR. FRAM: I object.

8 A. I don't accept that characterization.

9 MR. FRAM: That is argumentative.

10 THE COURT: I will sustain the objection.

11 MR. PRESS: That is all the questions I have.

12 THE COURT: Redirect?

13 MR. FRAM: Thank you, your Honor.

14 REDIRECT EXAMINATION.

15 BY MR. FRAM:

16 MR. FRAM: Can I have D 411 in evidence.

17 Q. I am handing you D 411 in evidence. Do you recognize
18 that as the jumpseat policy that ALPA adopted?

19 A. Yes. I do recognize it.

20 Q. Can you tell us from the document when the policy was
21 adopted?

22 A. The most recent change was the board 2000.

23 THE COURT: That is most recent change. Adopted
24 source was executive board, October, 1997. Amended board
25 2000.

1 Q. Mr. Press asked you questions about the Eastern strike
2 and a list, scab list. Do you recall that?

3 A. Yes.

4 Q. The Eastern strike was in 1991?

5 A. 1989, March of 1989, to about January of 91.

6 Q. So was the jumpseat policy in effect during the Eastern
7 strike?

8 A. No, it was not.

9 Q. The American Airlines pilot, give us your definition of
10 a scab, what does that mean in the labor context?

11 A. The normal definition is a person that crosses a lawful
12 picket line.

13 Q. Is it a union member?

14 THE WITNESS: A union member who could go to work.

15 THE COURT: Couldn't it be both a union member or a
16 nonunion member.

17 A. Could be both. Any member of a bargaining unit who
18 crosses the picket line, a lawful picket line of a union.

19 Q. The Eastern pilots who were an excused of being scabs,
20 were they members of ALPA?

21 A. They were members of ALPA prior to their action.

22 Q. Okay.

23 A. Many of them were. Some may not have been, most were.

24 Q. The American Airlines pilots in 2002, were they members
25 of ALPA?

1 A. No, they were not.

2 Q. Could they be classified as scabs?

3 A. No, they could not.

4 Q. So all right. So the last document you asked about, 148
5 OOOOO. Do you have that handy? Did Mr. Press give you a
6 copy. Resolution from Dallas Fort Worth?

7 A. Yes.

8 Q. Do you have any idea how many American pilots showed up
9 at the meeting that is referred to in this forwarded email?

10 A. No, it is a huge base and I would be surprised if there
11 were more than 100 or so pilots. Generally it is less than
12 that that come to the council meetings.

13 Q. Based upon your experience at council meetings, can you
14 give us a sense of what percentage of the pilots at a
15 domicile show up at at meeting?

16 MR. PRESS: There is no foundation that he attended
17 any American pilot meetings.

18 THE COURT: Have you ever attended an American MEC
19 meeting?

20 A. Not an MEC meeting. Council meeting.

21 THE COURT: Or council meeting.

22 A. I attended many others, but not an American.

23 THE COURT: I am going to, he can't testify to the
24 experience at Fort Worth, Dallas Fort Worth.

25 MR. FRAM: I understand.

1 THE COURT: I will sustain the objection.

2 Q. Do you have any idea from the email whether this
3 resolution even came to a vote?

4 A. It don't look like it did. It doesn't doesn't look like
5 it was passed or even came to a vote.

6 MR. FRAM: That is all I have.

7 THE COURT: Anything?

8 MR. PRESS: No, thank you.

9 THE COURT: Thank you very much. Let's take a
10 recess, we have been at it a little more than an hour and a
11 half. Be back about 20 after.

12 (Recess)

13 MR. FRAM: During my examination of Mr. Rosen, I
14 hood made a proffer about the relevance of his testimony
15 about Continental, and in overruling my proffer, your Honor,
16 stated that I had made a misstatement of fact and that I had
17 said was not a true statement. And I am concerned about
18 that, because I think it may have suggested to the jury that
19 in fact that ALPA was running a card campaign at American.
20 Our position is --

21 THE COURT: You are. You are trying to, A,
22 testify, in an area that is up to the jury and now you are
23 trying to get me to put my thumb on the scale.

24 The simple matter was there was a card campaign
25 going on at American. There was, there were numerous emails

1 about it between officials at ALPA, and the American pilots
2 who were conducting the campaign. And I think it is up to
3 the jury to decide what ALPA's involvement was. I mean you
4 have a guy who, on the one hand, testifies that he, that it
5 would be massively improper for ALPA to pay expenses and yet
6 you have many emails in which, oh, yeah, we will pay you.

7 Now, they changed their mind and there happened to
8 be a coincidence of when they changed their mind and the
9 timing of the Rights Foundation sort of blowing the whistle,
10 and when the decision not to pay, you know repeatedly they
11 said they would pay, even solicited, said send me your
12 receipt.

13 His testimony, and your statement about it, oh,
14 maybe that is one inference that could be drawn, but you
15 shouldn't be testifying as to what other evidence shows,
16 number 1, you shouldn't be saying other evidence, other
17 witnesses say that. That is never proper during an
18 examination of a witness for a lawyer to get up and say,
19 well, other witnesses have said this. That is just never
20 proper.

21 MR. FRAM: I didn't do that, your HOnor. I simply
22 explained, I explained to the Court that I was going to ask
23 the witness to compare what happened at Continental with what
24 didn't happen at American. I didn't make a special
25 statement. I didn't testify. I am concerned based upon the

1 Court's comment --

2 THE COURT: You are are concerned. Take me up.

3 MR. FRAM: No, your Honor.

4 THE COURT: What do you want me to do?

5 MR. FRAM: I would ask you to provide the jury with
6 a curative instruction that the issue of whether ALPA was
7 supporting in some improper way this campaign is an issue of
8 fact that is in dispute, and for them to decide, and that
9 they should disregard the Court's comments that I made a
10 misstatement of fact, and that what I said was not a true
11 statement.

12 That is what you said. And I was surprised and
13 taken aback by it, your Honor. I think it was inappropriate.
14 I have never seen your Honor make a statement like that about
15 a lawyer in front of a jury. I think it is highly
16 prejudicial for your Honor to accuse me of making a factual
17 misstatement in front of a jury.

18 If you felt that way, I think you should have
19 called counsel to sidebar.

20 So I request an instruction and in the absence of
21 an instruction, I will file a written motion, your Honor, for
22 a mistrial.

23 MR. PRESS: I am not inclined to think that any
24 instruction is warranted or proper. I quite frankly don't
25 remember the colloquy being so severe as Mr. Fram does. I

1 don't remember it being severe at all in what he did, he was
2 testifying in front of the jury. So I guess that is our
3 position, Judge.

4 THE COURT: Yes.

5 MR. FRAM: I wasn't testifying and I asked Ms.
6 Johnson at the break to pull up the transcript.

7 THE COURT: I was going to ask. Can she get back
8 to that series? ?

9 MR. FRAM: Yes. I would ask her to do so.

10 (REFERRING TO PAGE 26 OF THE TRANSCRIPT).

11 (Off-the-record discussion)

12 THE COURT: Let me look at it now.

13 MR. PRESS: Your Honor, if they want that
14 instruction, I would just as soon get the issue out of the
15 case if that is what they want.

16 THE COURT: Would you write it out? Write out the
17 instruction, what you want. Do it in hand.

18 MR. FRAM: Yes.

19 THE COURT: While you with are doing that I want to
20 look at it.

21 (Pause)

22 THE COURT: What never happened at American. If
23 that isn't testimony, I don't know what is.

24 None of it. You follow it up with the next
25 sentence which is, "none of this happened at American."

1 MR. FRAM: Talking about Continental. That was not
2 a card campaign. We are talking about a merger. I wasn't
3 making any reference to a card campaign.

4 THE COURT: None of this happened at American.

5 MR. FRAM: Compared to what never happened at
6 American.

7 MR. FRAM: Yes, your Honor. Referring to
8 Continental. No card campaign, it was a merger resolution,
9 it was the entire process.

10 THE COURT: You were making a comparison that may
11 or may not be justified. Maybe it was a different kind of
12 campaign, but you are implying, you didn't say there was no
13 merger resolution or anything like that. You said, "This
14 never happened at American."

15 Then I said, "You are wrong. That is a
16 misstatement of fact. There are cards out there. Those
17 cards didn't come from the Tooth Fairy. These cards were
18 being collected. They were handed over to ALPA. Your
19 statement that none of this happened in American is not a
20 true statement.

21 "Sorry, your Honor, none of this was done by ALPA.
22 ALPA did not organize other unions as explained by the
23 witness." Again, you are testifying, even after I call you
24 on it. You persist in it.

25 "Sorry, your Honor. None of this was done by ALPA.

1 ALPA did not organize other unions as explained by the
2 witness."

3 MR. FRAM: Your Honor, I am talking about
4 Continental.

5 THE COURT: I said that is unclear. That is your
6 take. I am not sure the evidence doesn't support another
7 inference on that.

8 MR. FRAM: Your Honor, I made a proffer without
9 attempting to testify or state facts and you accused me of
10 misstating facts. It is right there in the record. I tried
11 to explain further that Continental was not a card campaign.

12 THE COURT: You are making a fine point. You say,
13 they did not organize other unions, as explained by the
14 witness. You have been trying not only with this witness,
15 but other witness, to take, we don't go after other unions by
16 card campaigns. That is the point you have been making. You
17 have had witnesses testify to this. You had this witness
18 testify, and prior witnesses testify. Look, if you want to
19 write it out.

20 MR. FRAM: I was halfway through it.

21 THE COURT: Why don't you finish it. If there is
22 no objection, I will give it. On the basis of, in the face
23 of no objection.

24 (Off-the-record discussion)

25 THE COURT: Throughout the trial, you have been

1 trying to make the point that, oh, we just never go after a
2 union, dealing with a card campaign. I think Woerth
3 testified to that. I think there were several witnesses who
4 testified to that.

5 Well, the witness's testified to that. That is
6 fine. The jury can consider that testimony. But for a
7 lawyer to say that, that is a different story. That is
8 commenting on -- I will give it, if there is no objection to
9 the instruction.

10 MS. RODRIGUEZ: I don't know if there will be an
11 objection or not.

12 THE COURT: Let me see it.

13 MR. FRAM: Let me finish it, your Honor.

14 (Off-the-record discussion.

15 THE COURT: Let me see it.

16 THE COURT: Let me read the requested charge. I
17 think I can read it.

18 During the examination of Mr. Rosen I made a
19 comment to the effect that Mr. Fram had made an inaccurate
20 factual statement. I instruct you to disregard that comment.
21 Certain of the facts in this case are disputed by the
22 parties, and my comment referred to disputed fact. It is
23 your role as the jury to decide disputed fact. Is that
24 right?

25 MR. FRAM: Yes.

1 THE COURT: Have I read that correctly?

2 MR. FRAM: Yes, your Honor.

3 MS. RODRIGUEZ: Your Honor, again, I don't think
4 there was anything inappropriate about your Honor's comments
5 but to take an issue out of the case and put it aside. We
6 have no objection to that.

7 THE COURT: Right. Now, let me, Mr. Fram, what I
8 said was a blip in the three-week trial. This is going to
9 highlight the comment. Even if I tell them to disregard it,
10 it is like disregard the white elephant in the room, or
11 disregard the rhinoceros banging on the door. I will do it.
12 But I want to give you another 20 seconds to consider if that
13 is what you want.

14 MR. FRAM: Thank you, your Honor. I don't need the
15 20 seconds.

16 I request the instruction and I also request your
17 Honor if other issues come up that counsel be permitted to
18 come to sidebar. I don't want to be accused by anybody of
19 making factual statement. That wasn't my intent. I hope
20 your Honor appreciates that. I was simply --

21 THE COURT: I am imputing no evil intent of any
22 kind, in the least.

23 But I thought you did you did make factual
24 statements, in the very strong, in the context of all this
25 repeated testimony that if it is organized, we don't use card

1 campaigns, we only use merger negotiations, you were very
2 clearly referring to that testimony. And I stand by what I
3 said.

4 But I will give this instruction because there is
5 no objection to it. And I agree with the statement that with
6 disputed fact it is the jury who decides that.

7 MR. FRAM: I hope your Honor appreciates that part
8 of our defense here is in fact that this is not how we
9 organize. You heard that a number of times because it is
10 important to the case.

11 THE COURT: You are entitled to have witnesses say
12 that. You are not entitled to say it.

13 MR. FRAM: Well, I respectfully suggest, your
14 Honor, I don't think the record suggests that I did say that.

15 THE COURT: Well, the record is the record. We
16 know it is there. And we have to live with it. That is the
17 record.

18 MR. FRAM: I do request, it is a long trial. We
19 have all worked very hard. If your Honor has concerns, that
20 would lead to --

21 THE COURT: I had no concerns. I mean this is not
22 some, you know, lurking idea I had that suddenly popped out.
23 I had no complaints about about any counsel in this case.

24 MR. FRAM: But your Honor, for a Judge to accuse a
25 lawyer in front of a jury of making a factual misstatement is

1 serious and prejudicial and if your Honor is concerned about
2 anything I say, that might suggest that, I request that you
3 call counsel to sidebar. I really do.

4 THE COURT: Okay.

5 MR. FRAM: I am very upset about the Court's
6 comments on the record in front of the jury so.

7 THE COURT: All right.

8 MR. FRAM: I request that you not do that again,
9 please.

10 THE COURT: All right. I am going to give this
11 charge, this instruction. When the jury comes in.

12 MR. FRAM: Thank you, your Honor.

13 (Jury enters the courtroom (.)

14 THE COURT: Everyone please be seated.

15 Ladies and gentlemen, I want to give you an
16 instruction that relates to an interchange that took place
17 earlier in the day.

18 During the examination of Mr. Rosen I made a
19 comment to the effect that Mr. Fram had made an inaccurate
20 factual statement.

21 I instruct you to disregard that comment. Certain
22 of the facts in this case are disputed by the parties, and my
23 comment referred to those disputed facts. It is your role as
24 the jury to decide disputed facts. Your role and your role
25 alone.

1 I also want to make it clear that I have been very
2 proud of all the lawyers in this case. I believe all the
3 lawyers in this case, every one of them, have acted in the
4 highest traditions of the profession, and honorably in every
5 respect.

6 And I don't want anything I ever say to make you
7 think that I disrespect or am critical of anything, given the
8 difficulty of this case and the emotions involved. All the
9 lawyers on both sides have performed admirably.

10 Okay.

11 MR. FRAM: Thank you, your Honor. ALPA calls
12 Richard Seltzer to testify, please.

13 THE COURT: Richard Seltzer?

14 MR. FRAM: Yes, your Honor.

15 RICHARD SELTZER, sworn.

16 DIRECT EXAMINATION

17 BY MR. FRAM:

18 THE COURT: You may proceed.

19 Q. Good morning, Mr. Seltzer. You are a lawyer at the
20 Cohen, Weiss law firm in New York?

21 A. Yes.

22 Q. Is that correct?

23 A. Yes.

24 Q. That law firm has represented ALPA in certain legal
25 matters over the years?

1 A. Yes.

2 Q. Let me start with a little background about you, please.
3 You are how old?

4 A. I am 61.

5 Q. Tell us about your formal educational background,
6 please?

7 A. I went to secondary school in Verona, New Jersey. I
8 attended the University of Pennsylvania. I graduated with a
9 BA and MA in 1972, and I attended Colombia Law School and I
10 graduated in 1975.

11 Q. Where did you begin your law practice after you
12 graduated from Colombia in 1975?

13 A. I was hired by Robert Morgenthau when he first became
14 District Attorney as an assistant District Attorney in New
15 York County and I served there for six years, three years in
16 the appeals bureau and three years in the trial bureau.

17 Q. At some point did you begin doing labor law related
18 work?

19 A. Yes. In 1981 I joined Cohen, Weiss and Simon as an
20 associate.

21 Q. And you have remained at Cohen Weiss and Simon
22 continuous continuously since then?

23 A. Yes.

24 Q. Give us a sense of your legal practice up until 2001
25 which is the period I want to focus on.

1 A. When I first came to Cohen, Weiss and Simon I did a fair
2 amount of what I would call ordinary labor law work. I did
3 labor arbitrations, I did labor board proceedings. I worked
4 on some litigation.

5 But within the first year or two after I got there
6 I began to be assigned to some bankruptcy work that the firm
7 did for unions.

8 Q. Describe the work you did representing unions in
9 bankruptcies, generally, please.

10 A. I think initially I appeared at some hearings and some
11 cases where we represented a Teamsters negotiating committee,
12 and some trucking company cases. I did a small piece of the
13 very last part of the first Braniff bankruptcy. In 1984
14 Congress passed new legislation involving collective
15 bargaining agreements, called Section 1113, and after that
16 there were a large number of airline and steel industry and
17 other bankruptcies where unions were involved, and I became
18 involved in them.

19 Q. Okay. Tell us, if you could, what some of those
20 bankruptcies were? Let's start with the ones involving
21 airlines.

22 A. Okay. Not, I think in 1985 or 1986, there was a filing
23 by a small airline called Right Airlines in Cleveland. There
24 was what is called a 1113 E proceeding which is a company
25 seeking emergency relief from its collective bargaining

1 agreement.

2 I think it was the first one or two cases under
3 that section. I litigated that.

4 Eastern Airlines filed for bankruptcy in I believe
5 1989, and a number of us from the firm were involved in that
6 case, and a tremendous amount of litigation that resulted
7 from that case.

8 Q. By the way, was there a Section 1113 motion litigated in
9 Eastern bankruptcy?

10 A. Yes. Eastern first filed a 1113 and then withdrew it.
11 And then it filed another 1113 that was settled. And then it
12 filed a 1113 E, which I litigated, and so yes, there was a
13 lot of 1113 litigation.

14 There was a small airline in Alaska called Mark
15 Air, where there was a 1113 E settlement, without there
16 actually being a filing, there was a settlement right away,
17 not right away but after some negotiations and then I believe
18 there was a later 1113, there a second Mark Air bankruptcy.

19 There are also numerous small airlines that filed
20 for bankruptcy before 2001, in which I believe some of them
21 there are concessionary negotiations, there was never a 1113
22 as such because the airlines in most cases liquidated shortly
23 after the filing or a couple months after the filing, within
24 the first year of the filing.

25 Q. All right. Have you been involved in other bankruptcies

1 representing unions, not airlines, where Section 1113 motions
2 were litigated?

3 A. Yes.

4 Q. Without giving us the names and the details, give us an
5 approximate number of other bankruptcies where you litigated
6 1113 issues?

7 A. Is this before 2001.

8 Q. Before 2001, yes?

9 A. I think that there were probably approximately ten cases
10 in which I was involved one way or another, either litigating
11 it or writing the brief or helping to supervise other people
12 who were working on the case.

13 Q. All right. Were there other bankruptcies involving
14 where you represented unions, where 1113s were not made?

15 A. Yes.

16 Q. Give us a rough estimate of the number of those.

17 A. I think probably half of them, half of them there was
18 either a 1113 or a threatened 1113, and half of them, a lot
19 of the cases that liquidated right it away where there wasn't
20 one.

21 Q. Just to wrap this up, as of early 2001 what percentage
22 of your practice as a lawyer after you left the DA's office
23 had been devoted to representing unions in bankruptcy
24 matters?

25 A. I would say after 1984, close to half. And actually, I

1 just realized there was another major ALPA bankruptcy where
2 there was a 1113 before 2001. That was the Pan Am case.

3 Q. Tell us briefly what happened in Pan Am?

4 A. In Pan Am, which was suffering from real liquidity
5 problem at the beginning of the case, Delta Airlines, there
6 was an auction. Delta Airlines purchased the European routes
7 and the shuttle that is now the Delta Shuttle, and they are
8 now the European flights that Delta flies, and it also agreed
9 to fund, and a reorganized Pan Am that would fly to South
10 America.

11 Pan Am's situation deteriorated, finances
12 deteriorated. Delta was making more and more loans to Pan
13 Am, it was suffering. There was a requirement for the
14 union's to reach a new collective bargaining agreement with
15 Pan Am and at the end of the day, Delta withdrew in effect
16 its dispute about who withdrew first but Delta withdrew from
17 the transaction, and I was present on the day the company
18 announced it was liquidating and all the planes were coming
19 back to New York and that was the end of the company.

20 Q. What year was that?

21 A. 1991.

22 Q. Let's walk ahead and talk about the TWA bankruptcy, the
23 third bankruptcy in January of 2001, and the American
24 Airlines transaction. Were you asked to get involved in that
25 bankruptcy, the third TWA bankruptcy?

1 A. Yes.

2 Q. And what role were you asked to play in that
3 bankruptcy?

4 A. I was contacted early in the bankruptcy by various
5 individuals at ALPA, and there was another firm, it was a
6 corporate firm, Leboeuf lamb, that had represented the ALPA
7 and ALPA and TWA in bankruptcy matters in the past. But I, I
8 had conversations with various people at ALPA who said it was
9 likely that the labor contracts might become a focus of the
10 bankruptcy and people would like my assistance. So I agreed
11 to do it.

12 Q. At what point in time are you talking about?

13 A. There were some phone calls in January, after the filing
14 I didn't spend a lot of time in January on the case but there
15 were a couple calls and I started reviewing the filings that
16 had been made in the case.

17 Q. What did you do to familiarize yourself with TWA's
18 bankruptcy proceedings and TWA's financial condition?

19 A. There were a number of bankruptcy filings very early in
20 the case by TWA. It immediately sought for authority to
21 borrow money from American, called debtor in possession, DIP
22 financing. It was unusual. And usually that kind of
23 financing is provided by banks. And financial institutions.
24 In this case there was apparently nobody else to do the
25 financing except for American.

1 MR. JACOBSON: Objection to the speculative nature
2 of the last answer. It may be unusual, but the motivation
3 for it.

4 THE COURT: No, I am going to allow it.

5 Go ahead.

6 A. So I saw from the papers that when they filed they had
7 20 to \$30 million in cash, which from my past experience in
8 major airline bankruptcies I knew was an extremely small
9 amount of cash.

10 The papers reflected, and I think the testimony at
11 the early hearings reflected that they had a need for \$40
12 million the next day, and if the financing by American had
13 not been approved, they would not have had the money the
14 second day of the case to make payments that were due. And
15 that there was an asset purchase agreement with American, and
16 that the Judge, and it was temporarily a district court Judge
17 who was hearing the case the beginning of the case, scheduled
18 a hearing on proposed bidding procedures. I think in late
19 January.

20 Q. Tell us what bidding procedures are, why were they an
21 issue?

22 A. In bankruptcy when there is going to be a sale, a sale
23 of assets, usually there is an attempt made to find out if
24 there are other potential parties who would be interested in
25 bidding on the assets. And so the Judge approved a series of

1 procedures when bids were due, what they had it before, the
2 bidders had to show they had enough cash to do it, they had
3 to show how the company is going to get from A to B, and so
4 those bidding procedures were approved I believe the end of
5 January, something like January 27.

6 Q. What is the goal of setting bidding procedures like
7 that?

8 A. It is to see if there was an alternative transaction to
9 American that would provide more money that would be a better
10 transaction for the bankruptcy estate.

11 Q. What was the outcome of that bidding process?

12 THE COURT: First of all, did it go out to bid?

13 A. Yes, it did. The bidding procedures were approved which
14 meant that there were notices sent to the world that if you
15 wanted to make a bid, it was due by a certain date. Here are
16 the various parts of the bid you had to submit. And I
17 believe those were due some time in late February. At the
18 same time there was a motion on, there was a motion filed to
19 approve the sale of assets to American, and if the auction
20 had resulted in a different buyer than the motion would sort
21 have been transformed into a motion to sell to that other
22 entity.

23 Q. Were there any offers that complied with the requirement
24 of the bidding procedures that the bankruptcy court set?

25 A. No. There was a kind of offer from Carl Icahn, and some

1 individuals associated with him, and there was an auction on
2 March 5, and, in New York City at the law firm of the
3 debtors, called that company in bankruptcy a debtor, the
4 debtor's attorneys.

5 THE COURT: That is TWA,
6 A. TWA's attorneys. I am sorry.

7 THE COURT: Okay.

8 A. And this bid, as I remember, came in late. It did not
9 comply with the bidding procedures. They adjourned the
10 auction for a day or two until I think the 7th to try to see
11 if they, if TWA tried to see if it could make it a real offer
12 and whether, and it was not able to.

13 I attended the auction on the 7th. And TWA
14 announced that it did not believe this alternative suggestion
15 was a real -- complied with the bidding procedures order, and
16 that it was choosing the American bid, which had been
17 enhanced, American had offered more money as this bidding
18 procedures went along and as the auction went along, had
19 offered more money, and that it had chosen American as the
20 only complying bid and the winning bid.

21 Q. So did the American bid meet the requirements of, set by
22 the bankruptcy court forbid?

23 A. Yes.

24 Q. You walked up to the stand with a stack of documents. I
25 just want to make reference to a couple of them.

1 A. Okay.

2 Q. The first document D 395 in evidence?

3 THE COURT: D 395?

4 MR. FRAM: Yes, your Honor.

5 Q. That is a letter?

6 A. I have it.

7 Q. That is a letter you prepared and sent on or about
8 February 26, 2001?

9 A. That's correct.

10 Q. And this is a letter in which you are report to go
11 Captain Duane Woerth and others on what is happening in the
12 bankruptcy?

13 A. Yes. It was my practice and it was in TWA as well, from
14 time to time to send a report letter to the president of
15 ALPA, copied to the MEC chairman of the -- I also sent to the
16 vice chairman I see here and other officials at ALPA in
17 Washington and other officials of the TWA MEC.

18 Q. All right. And you are referring to the carbon copy
19 shown on the fifth page of the letter?

20 A. Yes.

21 Q. Okay. What position, what position was the TWA MEC
22 taking in the bankruptcy with respect to the Icahn sort of
23 bid that you described an and with respect to the American
24 proposal?

25 A. The, it was prepared by -- TWA -- ALPA filed a pleading,

1 a piece of paper, a legal document in the bankruptcy. And it
2 was called a limited objection. And it said that ALPA fully
3 supported the American transaction, but that it reserved its
4 rights under its scope clause, and under its successorship
5 clause, and that it wanted any order that approved the sale
6 to American to have a proviso that in effect it was without
7 prejudice to ALPA's rights under -- all the union's rights,
8 actually, under their collective bargaining agreement.

9 In addition, at the hearing, at the hearing in
10 Delaware on the 9th.

11 Q. The 9th of March?

12 A. The 9th of March to approve the sale to American, ALPA,
13 one of its other counsels from this corporate firm, Ralph
14 Mabey, who was a former bankruptcy judge, put on the vice
15 chairman of the MEC, Captain Shwartz, to testify at the
16 hearing in favor of the transaction -- in favor of the sale
17 to American, and to report to the Court that the night before
18 at an MEC meeting that took place in Wilmington the MEC had
19 voted to oppose in the strongest possible terms any
20 transaction of any kind whatsoever involving Carl Icahn.

21 Q. Did you have occasion during the period leading up to
22 this hearing on March 8 to talk to the members of the MEC,
23 the TWA MEC, about their perspective on the TWA bankruptcy?

24 A. Yes.

25 Q. Okay. And what did they say to you about whether they

1 approved or agreed with the American transaction or not?

2 A. I believe I attended part of the MEC meeting in
3 Wilmington the week of the fifth.

4 THE COURT: Fifth of what month?

5 THE WITNESS: Fifth of March. I am sorry, your
6 Honor.

7 A. I also was on a conference call with the MEC officers
8 and advisors I think March 1st, February 28, and at a meeting
9 on March 2. At every meeting that I attended members of the
10 MEC made clear that their goal, the seniority integration
11 goal, was to have the American transaction go through. And
12 to oppose the only other transaction, if you call it that,
13 that was deposited, which was the transaction by Carl Icahn,
14 and it was -- at every meeting, you know, MEC would say,
15 let's not forget our goal, that we want the American
16 transaction to go through.

17 Q. Did they explain why they wanted the American
18 transaction to go through?

19 A. The company was -- yes, they did.

20 Q. What did they say?

21 A. The company was on the verge of liquidation. American
22 was offering to hire all employees to assume all retiree
23 medical benefits, both for retired employees, and that
24 included retired pilots, and for active pilots, and it was
25 considered a much stronger, viable airline. The American,

1 they also, the American transaction was going to, in effect,
2 save them from a liquidation of their company and they were
3 going to go to a stronger company. They were going to be
4 hired. The retiree insurance was going to be assumed, and as
5 events went by there were additional things that were
6 offered, contractual provisions, that were offered that were
7 also attractive to the pilots as they expressed at these
8 meetings.

9 Q. Did you hear anybody within the TWA MEC in January or
10 February before the hearing that you described, did you hear
11 any of them oppose the American transaction or say no, we
12 don't think that this should go through?

13 A. No, I didn't. In fact, in reviewing the filings early
14 in the case, the time of the bidding procedure motion, ALPA
15 filed a statement of position in the bankruptcy court. This
16 was quite early, January. Saying that it supported the
17 adoption of the procedures, and in fact, saying that everyone
18 should remember that American, I remember this language, that
19 American was a voluntary participant in the bankruptcy. And
20 while the bidding procedure should be approved, nothing
21 should be done to dissuade American from continuing with its
22 offer, that it was a voluntary, I remember those words, a
23 voluntary participant in the bankruptcy.

24 Q. You mentioned I think a conference call on March 1 of
25 2001?

1 A. Yes.

2 Q. Do you have in front of you as the next exhibit D 379 in
3 evidence. Is that the agenda for that phone call?

4 A. Yes.

5 Q. Did you participate in the call?

6 A. Yes, I did.

7 Q. Who else to your recollection participated in that phone
8 conference?

9 A. As I remember it was not a full MEC conference call. It
10 was the MEC officers. I believe the major committee chairs,
11 the negotiating committee, the merger committee was on, and a
12 number of lawyers and advisors.

13 Q. Do you see as the last item on that document, flipping
14 through the third page, actually it is Roman numeral IV.
15 General 1113 advise?

16 A. Yes.

17 Q. To the negotiating committee. What is the likelihood of
18 defeating a 1113 motion. Had a 1113 motion been filed by TWA
19 as of March 1, 2001?

20 A. No. No.

21 Q. When did you first and anticipate that a 1113 motion
22 might be filed?

23 A. I think I anticipated the possibility as soon as I
24 became involved in the case. Once I saw that a pre condition
25 to the closing of the American transaction was that all the

1 collective bargaining agreements have to be amended to delete
2 various successorship and seniority provisions: So I knew at
3 that point unless American changed its mind or the parties
4 reached an agreement it was likely at some point we might
5 well see a 1113 motion.

6 Q. You just referred to a direct question that is in that
7 agenda for March 1 of 2001. You are one of the people listed
8 there under that agenda item?

9 A. That's correct.

10 Q. Did you have any comments during this conference call in
11 response to that question?

12 A. Yes.

13 Q. What did you do, what were your comments, what did you
14 say?

15 A. Well, we, as you said, there wasn't a 1113 motion yet.
16 The Judge had not approved, had not -- the auction, March
17 first -- yeah, the auction had not yet taken place. The
18 Judge hadn't approved the transaction with American yet. And
19 the negotiations had sort of just began I think they started
20 in late February. And so this was --

21 Q. When you say negotiations can you been more specific?

22 A. I think in late February American -- excuse me. TWA
23 wrote to ALPA and said, there is no agreement between ALPA
24 and the American pilots. I think we should, we need to sit
25 down and start negotiating.

1 Q. The negotiations between whom?

2 A. TWA, the company in bankruptcy and ALPA.

3 Q. Okay.

4 A. And so reviewed the fact that we were at a preliminary
5 stage, but my preliminary advice was that if this came down
6 to a question of American being the only game in town, the
7 only offer, and still insisting on a chain to this provision
8 to go forward, that there was an excellent chance that the
9 motion would win and there was a very poor chance of ALPA
10 defeating it.

11 Q. When did you first start to draft the, to physically
12 prepare a written response, to a 1113 motion. Do you recall?

13 A. In early March. Before the motion was filed.

14 Q. Do you recall the specific date?

15 A. I doubt, I know I think I prepared an outline of
16 possibilities for for things to consider for this call. I
17 know I did an early March, I don't remember the date. I
18 would be guessing.

19 Q. The next document you have is D 396 in evidence. Do you
20 recognize that as one of your other report letters to Captain
21 Woerth and others about the status of the bankruptcy? March
22 8?

23 A. I am not sure I have that document.

24 I do. I am sorry. It is attached. It got stuck.

25 I do.

1 Q. And what happened in the bankruptcy court on March 8,
2 2001?

3 A. I think as I testified earlier, the initial auction took
4 place on the fifth which was a Monday. The auction continued
5 on the 7th and the hearing to approve the sale to American
6 took place, was scheduled to take place on Friday, the 9th.

7 Q. Okay. Did there come a point when you attended a
8 meeting in Washington to talk about Section 1113 issues and
9 other issues?

10 A. Yes.

11 Q. Okay.

12 A. I think it was in Herndon, actually.

13 Q. Do you have D 381 in evidence in front of you, the
14 agenda.

15 A. Yes.

16 Q. For the March 14 meeting?

17 A. Yes.

18 Q. I see the email is dated March 12, 2001?

19 A. That's correct.

20 Q. Pull that up, please. And do you see an in item 2 there
21 is recommended strategy/ discussion of Wilder memorandum.
22 You see items 6 and 7, references to Holtzman March 12
23 bankruptcy memo. Holtzman March 12 RLA memo?

24 A. Yes.

25 Q. Do you have behind that document as the next three

1 documents, three memos all dated March 13, 2001. The first
2 being J 119, the second D 380 and the third D 378?

3 A. Yes, I do.

4 Q. Are those the three memos referred to in this agenda for
5 March 14?

6 A. Are you including item 97 on the list. Yes, that's
7 correct.

8 Q. The memo is dated March 13, 2001, is that correct?

9 A. That's correct.

10 Q. The an agenda was circulated on March 12, 2001? The
11 reference in the agenda, two of them are March 12 memos?

12 A. Yeah. Actually, the date on the memos from David
13 Holtzman that I have in front of me are March 13, but I have
14 a copy that I received, that I produced, actually, and that
15 are dated March 12, as I remember.

16 Q. Is that copy dated March 12 identical to the March 13
17 paper copy, what we are working with?

18 A. Yes,

19 Q. I just want to clarify, you attended the meeting on
20 March 14 in Herndon?

21 A. Yes.

22 Q. Who else was present?

23 A. Again I believe it was a meeting with the MEC officers,
24 the committee heads, and various legal and financial
25 advisors.

1 Q. Let's take the three sets of issues. Recommended
2 strategy/discussion of Wilder memorandum. Tell us without
3 getting into a great amount of detail, what was the strategy,
4 the recommended strategy outlined in the Wilder memorandum?

5 A. The Wilder memorandum, it there was a later letter, too,
6 but I think essentially the advice was was the same in both,
7 was that ALPA had a grievance that Northwest -- excuse me --
8 that TWA had violated the successorship and scope provisions
9 of the contract, that ALPA should proceed with those
10 grievances. The company was likely not to grieve them now.
11 And that a lawsuit should be filed in the District Court, and
12 Mr. Wilder said that that is that is where, that is where
13 there was jurisdiction.

14 Q. You mean in the district court as opposed to the
15 bankruptcy court?

16 A. That's correct. For bankruptcy there are sort of three
17 levels of courts. There is the bankruptcy court that
18 presides over bankruptcy cases. There is a District Court
19 like this one, which is the next level up, and then there is
20 a Court of Appeals.

21 And so Mr. Wilder said that a loss would be
22 required to force TWA to grieve these -- to proceed with the
23 arbitration, that it could be brought in the District Court,
24 the District Court had jurisdiction and the District Court
25 would hear it, and that also that if the District Court could

1 be asked to issue an injunction against the transaction, and
2 to hold the entire transaction in abeyance just sort of let
3 it sit there for a while while this arbitration took place
4 over ALPA's contractual rights.

5 Q. The whole transaction being what?

6 A. The whole sale to the American.

7 Q. You said the transaction to hold the transaction in
8 abeyance. Is there a different word Mr. Wilder used to
9 describe the goal of the theory?

10 A. At a later meeting he called it ransom.

11 Q. What was the context in which he used the word ransom?

12 A. That his litigation strategy would delay everything and
13 put a lot of leverage on American and in effect, the only way
14 for American to proceed would be to ransom the transaction by
15 doing what ALPA wanted.

16 Q. Did, the discussion that took place about this theory on
17 March 14, did you have any comments in response to this
18 theory that Mr. Roland Wilder was offering up?

19 A. Yes. I mean, I had just heard about this theory. I
20 think he sent a memo to the MEC officers. I wasn't copied on
21 it. But at some point either at this meeting, or it was
22 described to me at this meeting, in, I think one thing I just
23 need to say in explain what I said, March 14 was after March
24 12. And March 12, the bankruptcy court had issued a very
25 strong decision approving the transaction to sell the TWA

1 assets to American.

2 Q. What do you mean by a strong decision?

3 A. He said --

4 THE COURT: This is Judge Walsh.

5 THE WITNESS: This is Judge Walsh, yes, your Honor.

6 A. He said there was a very, very strong likelihood, let me
7 use the word, a very, very strong likelihood, if not
8 certainty, that TWA would liquidate if this transaction did
9 not gone through. And he used words like collapse in a free
10 fall bankruptcy if this transaction didn't go through. My
11 experience in bankruptcy, those were pretty strong words for
12 a Judge to use.

13 Q. What impact if any did those words have on your
14 assessment of Mr. Wilder's injunction theory?

15 A. Well, I first thought as a legal matter that the lawsuit
16 would not be heard in District Court. When I was
17 representing ALPA in Eastern bankruptcy, Eastern Airlines,
18 ALPA filed that kind of lawsuit in the District Court. And
19 the bankruptcy Judge enjoined it. And said, if a lawsuit was
20 going to be brought it had to be brought before the
21 bankruptcy court.

22 The bankruptcy court also enjoined an arbitration.
23 There were two parts of the case. It went up to the Second
24 Circuit. I argued it, I was the lead attorney on it. And
25 the Second Circuit held that as long as the bankruptcy court

1 had a basis to hear a lawsuit involving the bankruptcy
2 activities of a company, that the lawsuit had to be heard in
3 the bankruptcy court. That was the holding of the case. It
4 also held that arbitrations were not stopped by a bankruptcy.
5 There were two pieces. One about arbitration and one about
6 lawsuits.

7 And so I thought that Mr. Wilder didn't discuss
8 this case.

9 Q. What was the name of the case?

10 A. In re Ionosphere club because that was, I think it was a
11 travel agency or something that Eastern Airlines ran. So the
12 name that was used in all the Eastern Airlines decisions was
13 Ionosphere clubs but it was the Eastern Airlines case. It
14 was a pretty well known case. It is an issue I think in the
15 early 90s and American's the people who dealt with unions in
16 bankruptcy, it was a very, very well known case. I
17 particularly was aware of it because it was my case.

18 So I thought his suggestion that this injunction
19 action was going to be heard in the District Court, just was
20 incorrect.

21 I also, I don't know whether I said it at in
22 meeting or another meeting, but because of a shortage of
23 bankruptcy judges in Delaware, the District Court judges had
24 sat as bankruptcy court judges in many cases. And so they
25 were used to sort of being bankruptcy judges. And the

1 impression of the bankruptcy bar, and my impression, was that
2 they, more than the usual District Court Judge, they tended
3 to see things in bankruptcy terms in bankruptcy cases.

4 So the idea that some District Court Judge is just
5 going to issue injunctions without sort of a, taking into
6 consideration what was happening in the bankruptcy, just
7 struck me as completely misleading and incorrect and without
8 really any basis in the law.

9 Q. And how did you express your view at this meeting with
10 respect to Mr. Wilder's injunction theory?

11 A. Well, to the extent of -- again, we were sort of, we
12 would move forward at this point. The Judge had approved the
13 American transaction. The 1113 hadn't been filed yet,
14 although by the 14 we were pretty sure it was coming and
15 coming soon.

16 So I thought the idea that the District Court would
17 hear this case was wrong. I expressed that. And he also had
18 theories about how it would delay the 1113, and it was
19 amplified as he went along and another memo later on, and at
20 least my preliminary review of that was that that was not
21 going to happen either.

22 Q. Let's take it a meeting at a time. Have you told us
23 everything you recall saying at this meeting on March 14
24 about your view of Wilder's injunction theory?

25 A. Yes, I think generally I have.

1 Q. Okay. Do you recall some discussion at this meeting
2 about the likelihood that a Section 1113 motion, if filed,
3 would be granted?

4 A. Yes.

5 Q. What do you recall saying about that?

6 A. What I recall saying is that, again, that the likelihood
7 of it being granted in respect to this scope issue, was very
8 high. That was the only issue out there.

9 But as I remember in the middle of March there were
10 still a number of negotiations going on between ALPA and TWA
11 about the contract that would be in effect between ALPA, TWA
12 LLC, the new company, the new part of American, and that
13 there were a bunch of issues out there. And and those
14 negotiations were continuing, and so I said if TWA and
15 American stop negotiating, or don't offer anything, or don't
16 provide information you want, I still didn't think our
17 chances were that good but that if they were not negotiating
18 and making proposals about the new contract, that perhaps we
19 would have -- there was a possibility at least of, it wasn't
20 quite as dire, but in terms of the scope, I think my view all
21 along was that we didn't have owe on I didn't -- I didn't see
22 that ALPA had much of a chance.

23 Q. Why were issues of offers and negotiations, why were
24 they relevant to Section 1113?

25 A. Well, under Section 1113 there are requirements that the

1 company in bankruptcy and the union meet at reasonable times,
2 that they negotiate in good faith, that the Court's have
3 said, you know, that they make proposals, and so March 14
4 wasn't the end of the negotiation.

5 So I remember saying in terms of these other
6 matters, you know, we have to sort of see what happens in
7 terms of them but that ultimately in terms of the scope
8 clause, that is what the 1113 came down to, I did not think,
9 again, we could see what developments happen, we hadn't seen
10 the motion, we were still tort of -- the day ended up being
11 the day before the motion was filed but my general view was
12 it was going to be very, very hard to defeat a 1113 that was
13 focused on just the scope and successorship clause.

14 Q. Were there other advisors to the TWA MEC present at this
15 meeting on March 14, 2001?

16 A. My recollection is that at all of these meetings David
17 Holtzman was there, Steve Tumblin was there who was a lawyer
18 from LeBoeuf Lamb, the corporate law firm that ALPA had used,
19 the TWA MEC had used in the past. Roland Wilder may have
20 been there. I think he was there actually, and Michael
21 Glanzer who was the financial advisor, attended I think every
22 one of these meetings.

23 Q. Do you recall what any of the other advisors said if
24 they said anything about the likelihood that a Section 1113
25 motion, if filed, would be granted?

1 A. Take again, take into consideration that it was still
2 sort of premature, the motion hadn't been filed.

3 Negotiations were still going on. I don't think anyone
4 differed with my view, with my general view.

5 Q. Did the issue come up as this March 14, 2001 meeting,
6 about whether, if the 1113 motion was granted the TWA pilots
7 would have a right to strike. Do you recall that coming up
8 at this meeting?

9 A. I know it came up at the next two meetings after this.
10 It may well have come up at this meeting. You don't know
11 whether I remember whether it specifically came up with this
12 meeting.

13 Q. Let's move ahead to the next meeting then. I think you
14 mentioned a couple minutes ago that the actual 1113 motion
15 was filed a day or so later?

16 A. It was filed on the 15th.

17 Q. Do you have in front of you just for reference if you
18 need it D 12 in evidence, which is the motion and D 211 in
19 evidence, which is the supporting declaration of Terry
20 Hayes.

21 A. Yes, there was a motion, there was a memorandum of law
22 which is attached to the proceedings and then there was a
23 Terry Hayes declaration and a bunch of exhibits to that.

24 Q. Is D 397 in evidence, your March 16, 2001 document, the
25 next document?

1 A. Yes.

2 Q. What was your purpose in preparing and circulating this
3 letter?.

4 A. There were a number of developments in the bankruptcy.
5 One of them was the filing of the 1113 motion which I
6 regarded as a very important development. I thought it was
7 -- the Judge had also, since my last report letter, had
8 approved the sale to American. There was a contract, it was
9 a Carl Icahn, who used to be the owner of TWA, a Carl Icahn
10 entity called Karabu which had this special arrangement with
11 TWA to sell ticket.

12 That contract had been rejected by the bankruptcy
13 court, and the 1113 motion had been filed. So I was
14 reporting on all those things in this letter.

15 Q. I see on the second page of the letter a heading,
16 Section 1113 motion?

17 A. Yes.

18 Q. The motion papers were collectively about how many
19 pages, how long?

20 A. The Terry Hayes declaration of exhibits was a couple of
21 inches thick. The motion and the memo, I don't know, were
22 40, 30, 40 pages, something like that. It was a big stack of
23 documents.

24 Q. Can you summarize the motion it looks like in a page or
25 so?

1 A. Yes.

2 Q. Just looking at this second full paragraph, the one
3 beginning the motion relates to the asset purchase agreement?

4 A. Yes.

5 Q. Skipping ahead. The second line on that paragraph. The
6 motion and supporting papers include the following statements
7 about the consequences of the failure to reach agreement or
8 or reject the CBA. You quoted, it looks like four block
9 quotes in the motion papers?

10 A. Yes.

11 Q. Why did you choose to highly those four aspects of the
12 motion in this report letter to Captain Woerth and others?

13 A. TWA was saying in very strong terms, and Mr. Hayes was
14 saying in a declaration under oath, that if the -- if ALPA
15 did not agree, and it was the IAM, the machinists union, and
16 ALPA did not agree to these changes, or if the contracts were
17 not rejected, that it was TWA believed that it would have to
18 liquidate, and that it would have no other option. And Mr.
19 Hayes said that it was TWA's view that American was concerned
20 not only about closing but any delay in closing as it stays
21 on there on the board, it was TWA's understanding that the
22 sale was delayed, American might walk away from the deal.

23 I thought that these were very significant
24 statements, that they represented a -- TWA's statements, but
25 TWA statements were stating that there was a major risk to

1 TWA liquidating, or the American transaction going through,
2 if an agreement was not reached or there was not a
3 rejection.

4 I thought, again, these were very strong
5 statements. They represented a potential very big risk, and
6 I thought everybody at ALPA, from the president, the MEC
7 chair, through the MEC vice chair, to the two representatives
8 on the creditors committee, needed to focus on these risks,
9 that, you you know, they were in the documents. They said
10 what they said.

11 Q. All right. What is the next meeting you recall where
12 Section 1113 and related issues were discussed?

13 A. There was a meeting in St. Louis. I believe on March 21
14 and 22. And it was called, I think to discuss the status of
15 the 1113. It was also, there was also what is called a 1114,
16 it is another provision of the code dealing with retiree
17 medical benefits, and there was a separate committee diagnose
18 that, reviewing that but that was also going on. We were
19 discussing that as well.

20 Q. Was there a separate motion that had been filed under
21 Section 1114?

22 A. Yes. I believe so.

23 Q. To what degree were you involved in assessing that?

24 A. I wasn't, but there was -- at a certain point the Court
25 or the U.S. trustee had to appoint a committee. They wanted

1 a pilot representative or two, and so I do remember talking
2 to people at ALPA about that, did they have a recommendation
3 on who might be a good retiree to serve on the committee.
4 But other than that, and sort of reporting that the motion
5 had been made, ALPA didn't -- none of the unions I think
6 represented there, retirees for those purposes, so it wasn't
7 that.

8 Q. Did you give some kind of presentation at the meeting on
9 March 21 and 22 of 2001 about Section 1113, the likelihood of
10 it being granted and related issues?

11 A. Yes.

12 Q. As of March 21 and 22, did you have an understanding
13 about when the motion would be heard by the Judge, by Judge
14 Walsh and when ALPA would be required to file any responsive
15 papers?

16 A. Yes.

17 Q. What was your understanding of when the motion was going
18 to be heard by Judge Walsh are?

19 A. I believe when the motion was filed, in fact, if I can
20 look at it for a second, it had down, hearing on the first
21 page, it had hearing date to be determined. Objection date,
22 March 26.

23 So when it was filed we actually didn't know what
24 day it was going to be heard.

25 I believe right around the 21st, it may have been

1 the 21st, TWA filed an amended motion stating that the
2 hearing would be held on April 6, and that objections would
3 be due March 30 instead of March 26.

4 Q. Okay.

5 A. And I believe I reported at that meeting that at some
6 point during that meeting.

7 Q. When you reported to the MEC -- by the way, just tell us
8 generally who was present at the meetings on March 21 and 22,
9 2001?

10 A. It was an MEC meeting. There were a series of these
11 meetings. Members of the MEC would be there and the officers
12 and the chairs at least of the negotiating and merger
13 committees, and the creditors committee representatives, and
14 David Holtzman and me and Steve Tumblin and Michael Glanzer,
15 and I think at most of these meetings, if not all of them,
16 Clay Warner.

17 Q. Did you talk at the meeting on March 21 and 22 about
18 whether the hearing date could be postponed, whether there is
19 a way to get the motion to be considered to be put off?

20 A. I believe I did.

21 Q. What did he say?

22 A. The statute, this is a very unusual statute. The
23 statute says that when the motion is filed, the hearing, the
24 Court will schedule the hearing no later than two weeks after
25 the motion is filed. And the Court, for, it says something

1 like special circumstances or the circumstances of the case,
2 can extend it one week, and that is all. The hearing has to
3 start 21 days after the motion is filed. No later than that.
4 Unless the company agrees.

5 As I remember, April 6 was 21 days, maybe it was 20
6 days, but it was 21 days after March 15. So that unless the
7 company agreed, the hearing was going on start on April 6.
8 The statute instructed the Judge not to extend the start of
9 the hearing unless the company agreed.

10 Q. Did you have a sense on March 21 or 22 of how long the
11 hearing would take?

12 A. Yes. I had a general sense.

13 Q. Did you talk to the people at the meeting about how long
14 you thought the hearing would take?

15 A. At both this meeting and the meeting on, the last
16 meeting which was April 1, 2, my -- and we were focusing at
17 this point more on getting the objection done and filed.
18 That was the first thing we needed to do. But that -- from
19 everything I knew in the negotiations, everything was
20 focusing now on scope and successorship. And seniority
21 integration. I sort of mean that too.

22 And so my view, I think I expressed at this point,
23 I know I expressed at the next meeting, was that we would
24 need a witness, the negotiating history was going to be
25 agreed to, I thought, what is in the contract is going to be

1 agreed to. We were going to need a witness to explain why
2 seniority integration was important to ALPA, what proposals
3 it had made and why it believed that its proposal should be
4 adopted. And that that was going to be the focus of what --
5 there were documents we could present. There were certain
6 more technical objections we could make. But that the focus
7 of the hearing is going to to be on a witness explaining to
8 the Court why seniority was important, how it affected a
9 pilot's life, and why it was important to ALPA to have this
10 proposal.

11 Q. Hadn't there been Section 1113 hearings in other cases
12 that had taken weeks, testimony and evidence put in over
13 weeks?

14 A. Yes.

15 Q. Okay. Did you think that the hearing that might take
16 place here would take weeks?

17 A. Not at all.

18 Q. How long, if you can recall in days, did you tell people
19 you thought the hearing would take?

20 A. A day or two. The hearing on the entire sale to
21 American Airlines took a day and a half.

22 Q. Is that unusually fast in your experience?

23 A. Not in a -- not in a case where the company was losing
24 three million dollars a day and was only operating because it
25 had received financing from American Airlines, and where the

1 reports that were being received were that it was American
2 Airlines presence that was keeping passengers flying TWA.
3 And so in all these other cases -- not all these other cases
4 -- but in many 1113 -- most 1113 proceedings the issue isn't
5 scope or successorship or seniority integration. If the
6 company says you are making so many dollars an hour, and we
7 want to cut it by half, and the union comes back and says no,
8 we only want to cut it by a dollar, and there are economic
9 experts get on the stand and say here is the company's
10 balance sheet and here is the company's cash flow and we
11 think that this much cash flow is enough.

12 The other side says no, we think this much cash is
13 enough. And there can be a lot of testimony about that, and
14 about the meaning of proposals. As we are getting towards
15 the end of March, the entire process is focused on the
16 seniority integration issue. That is, seniority integration
17 issue and the fact that this, only the American transaction
18 out there, that is going to save the airline and jobs. That
19 what is the hearing is going to come down to.

20 Q. Did you have any views at the meeting on March 21 and 22
21 about how long after the hearing was concluded Judge Walsh
22 would likely rule on the motion?

23 A. Yes.

24 Q. Judges sometimes take months and months to decide
25 complex matters?

1 THE COURT: Sometimes years.

2 Q. Okay. You understand from your experience that
3 sometimes judges need time to work through difficult issues
4 and render their decisions, yes?

5 A. Yes.

6 Q. Did you have a sense from your knowledge of Judge Walsh
7 of how long it was likely to take him to rule on the 1113
8 motion if it went to a hearing?

9 A. Very, very quickly. He finished the hearing on the sale
10 motion on a Saturday. He continued the hearing on a
11 Saturday. Somewhat unusual. And he issued the decision on a
12 Monday.

13 Judge Walsh, as many bankruptcy judges do, often
14 instead of writing a full decision, will come out on the
15 bench and read his decision into the record. And that is
16 what he did with the sale hearing. That is what I have seen
17 bankruptcy judges do many times. Sometimes they will issue
18 formal decisions, but very often because bankruptcy tends to
19 be a very expedited process, they will read the decision
20 into the record. And that is what he had been doing in the
21 case.

22 Q. Sometimes motions get settled, they get worked out with
23 the assistance of judges?

24 A. Sometimes, yes.

25 Q. Had you had decisions in bankruptcy where the Judge

1 talked to a lot of lawyers, maybe back in chambers or a
2 conference room, to try to broker a deal?

3 A. In a 1113 proceeding it happened to me once and it
4 happened ten years after that.

5 Q. I guess my question is wasn't there a chance in your
6 mind that instead of proceeding with the 1113 hearing that
7 Judge Walsh might try to sit down with the lawyers and broker
8 a deal that would be better for the TWA pilots than what TWA
9 LLC was offering?

10 A. I had one or two cases, it was a 1114 case that actually
11 the motion was, it it was a very complex, difficult retiree
12 insurance matter before Judge Walsh, where we represented the
13 steel workers.

14 And there was another actual proceeding where
15 people in the office were handling with Judge Walsh. We had
16 been before Judge Walsh in one way or another many times.

17 My experience has been that Judge Walsh does not
18 hold chambers conferences. Judge Walsh comes out on the
19 bench and he asks the attorney to speak and he proceeds.
20 Some judges and there are some bankruptcy judges who will
21 pull people know chamber --- not full people, whoosh -- ask
22 lawyers to come into, who will ask people to -- ask lawyers
23 to come into chambers and talk about sort of where the case
24 is going, and there are some judges who don't do that at
25 all.

1 Judge Walsh, I was before Judge Walsh last week in
2 a different case, and I actually asked a local Wilmington
3 lawyer, they said they never heard of Judge Walsh ever having
4 a chambers conference, in 20, 30 years on the bench.

5 Q. So going back to March of 2001, if Judge Walsh granted
6 the TWA motion after a hearing, wouldn't there have been a
7 right to appeal that rejection of the TWA contract up to
8 District Court?

9 A. In was a potential right to do that.

10 Q. Tell us what the potential right was?

11 A. There have been cases, and this is a, sort of a
12 technical aspect of bankruptcy, where in bankruptcy because
13 things move very quickly, and events and sales get done, that
14 a lot of times when you when you try to appeal something from
15 a bankruptcy court, the appeals court will say, it is too
16 late. The sale took place. The plan or reorganization was
17 confirmed.

18 THE COURT: That is more when the sale, when you
19 are trying to stop a sale that has already taken place, the
20 doctrine of mootness --

21 THE WITNESS: That's correct.

22 THE COURT: You just say it is too late, you try to
23 undo something that has already happened.

24 THE WITNESS: That's right.

25 THE COURT: It wouldn't normally apply in a 1113.

1 A. I wouldn't but --

2 THE COURT: Unless it was followed by --

3 A. In this case, the sale was approved. The report was
4 that American was anxious to close as quickly as possible.
5 So one possibility was, while we were appealing from the
6 1113, if the sale closed, we might be faced with a mootness
7 problem.

8 THE COURT: Wouldn't the reaction at that point,
9 the person, unhappy with the decision to grant the 1113,
10 wouldn't they at least, in fact they would have to apply for
11 a temporary stay of the sale to keep that that from
12 happening, to keep the whole thing from becoming moot?

13 A. Yes, your Honor.

14 THE COURT: Then they would take that up to the
15 District Court and maybe after that the Circuit.

16 THE WITNESS: Right. And already in the case, I
17 don't remember which party sought to stay the bidding
18 procedures order. And Judge Walsh had issued again a pretty
19 strong opinion saying that the expedited nature, the
20 expedited schedule for the bid procedures was necessary, and
21 that he was not going to, he was not going to stay it. It
22 was not stayed on appeal.

23 If you are not the government, there is always a
24 problem in these cases if a bond is requested because in this
25 case the transaction was worth millions and millions of

1 dollars. The Judge, the bankruptcy Judge was saying the
2 alternative was liquidation. So in, and my conclusion was
3 also that it was not only that Judge Walsh was likely to
4 grant 1113.

5 My conclusion was that it was likely an appeal that
6 that kind of odd would be affirmed.

7 Q. In terms of the potential for a stay, you mentioned the
8 bond.

9 Can you just explain to the jury what the roll of
10 the bond is in the appeal process as it relates to a stay?

11 A. Okay. When you get a decision from a trial court, like
12 this court or a bankruptcy court, and then you appeal, and
13 you want whatever was done by the court not to take place
14 while you are appealing, in other words, you wanting just to
15 stay the same even though you lost, you want everything to
16 stay the same while you are appealing, what the judges will
17 often do is say if you want that you have to put up a whole
18 bunch of money with the Court, a bond, so that if you are
19 wrong and you appeal and you have delayed everything and
20 people have lost out because we delayed it, there is a big
21 sum of money available to compensate the people who were hurt
22 by the delay.

23 And so, and in most cases when you lose, and then
24 you want to go on appeal and you want the decision stopped
25 while you are appealing, if it is that kind of case, then

1 courts usually say, well, you have to put up some money. If
2 it is a small case, the bond could be 5,000 or 50,000. If it
3 was a case like this, my thought was that TWA and/or American
4 would say, and then it happened in other cases where other,
5 what other parties have tried to stay, you know, put up a
6 bond of whatever amount. And I thought once we got to April
7 1, once the motion was filed, again, there were developments
8 and contract negotiations were getting closer.

9 American transaction has been approved. Everything
10 was sort of narrowing down. I thought it was very likely
11 that this 1113, the 1113 would be approved and that that
12 would be affirmed on appeal, and as it happens, ultimately
13 there was an appeal and it was -- and the decision to sell
14 was affirmed on appeal.

15 Q. Still focusing on March 21 and 22 of 2001, do you recall
16 any discussion at that meeting about the right to strike,
17 self help remedies about the TWA pilot might have if the 1113
18 motion was granted and the contract went by the wayside.

19 A. Yes.

20 Q. Tell us what you recall of that discussion?

21 A. Well, the issue had been raised in one of the memos from
22 Mr. Holtzman, one of the March 12 memos, so it was discussed,
23 I know, I believe at the March 14 meeting, and the last, my
24 memory is the last two meetings, the last two meetings to me
25 were April 1 and March 21, 22, that the issue of the strike

1 was discussed. I know it was at least one of them. I
2 believe it was at both meetings.

3 Q. We are still focusing on March 21 and 22?

4 A. Right.

5 Q. Do you recall it being discussed at that meeting?

6 A. I believe it was discussed because we were discussing --
7 the meeting was really called to discuss the 1113. The
8 filing, the response, the implications of a 1113.

9 Q. Do you recall what was said about the potential right to
10 strike with the 11th, if the 1113 were granted?

11 A. Yes.

12 Q. Tell us, please.

13 A. I was very careful, the other advisors were very careful
14 to sort of divide up this issue. And Mr. Holtzman's memo had
15 divided up the issue for us. The first issue was could, if
16 the 1113 were granted, could the pilots strike against the
17 company in bankruptcy. TWA, Inc., the debtor, I think of it
18 as the debtor. And the answer to that was yes. We could
19 strike against this company that was on the verge of
20 liquidation, they could strike against that company. And
21 there --

22 THE COURT: It was a company that was still flying
23 the aircraft.

24 A. I it was the company still flying the aircraft, although
25 one could wonder if the 1113 were granted whether, how much

1 longer they would be flying the aircraft.

2 THE COURT: I know.

3 A. The second question that was posed to us at this meeting
4 and the March 12 memos, March 14 meeting, was under various
5 circumstances, if the pilots went -- if the pilots ended up
6 despite the 1113 being hired by the new company, I think of
7 it as the new company, TWA LLC, could they strike against TWA
8 LLC.

9 THE COURT: You are assuming the closing took
10 place.

11 A. Yes. That is how the question was usually posed to us.
12 The closing took place, there was no contract. But the
13 employees got hired any way. The pilots got hired any way.
14 And that answer was very different. That answer was we could
15 give no assurance that they would be able to strike. That it
16 was sort of a -- we received a number of questions about it,
17 because the pilots were looking to see, was there some
18 assurance that if the contract were rejected and they were
19 hired any way, it sort of wanted to know, well, what would
20 take place with the new airline, would we be protected?
21 Could we strike? Would we have a contract? They asked all
22 these questions together. What would happen?

23 And on the strike we explained, and I had had some
24 research done before this meeting on the 21st, and I had, and
25 I had research done twice because my, I had it done.

1 Q. Research done by whom?

2 A. Research done by other people in my office, and in fact
3 I held a meeting with several, I do some Railway Labor Act
4 work but I primarily do bankruptcy work involving ALPA.

5 I held a meeting with other individuals in my
6 office who do more Railway Labor Act work, and Clay or
7 somebody may have brought it to my attention.

8 Q. Clay Warner?

9 A. After those meetings it was brought to my attention.

10 Q. Clay Warner?

11 A. Yes, I am sorry. Clay Warner. That there was a Second
12 Circuit case, that, from the point of view of the union, a
13 terrible case, but sometimes there are terrible cases, that
14 said, if a company was a new company, and a new employer, and
15 there was no contract, between the company and the union,
16 under the Railway Labor Act which is what governed the
17 airlines, the union couldn't strike because it was contrary
18 to an obligation of the Railway Labor Act, but the company,
19 after it set terms and conditions of employment, could change
20 it.

21 It is the worst of all possible words. The union
22 couldn't strike and the company could lower salaries, change
23 working conditions. And at the end of the decision, the
24 Second Circuit said, you know, the union says this sounds
25 very unfair. It is very unfair. It sounds very unfair but

1 that is the law, and that is the law for a new company.

2 We had tremendous concern that that is the law that
3 would be applied to TWA LLC, the new company, if there was no
4 contract, and it was just a transfer of employees. And that
5 a court would say that is a new company, there is no contract
6 in effect and there were other theories that somehow it was a
7 successor under labor law although I am not sure that would
8 have done anything other than a bargaining obligation. What
9 we said is we can give you no assurance that you can strike
10 and there is a good possibility, or a larger probability,
11 that you will not be able to strike. There is this awful
12 decision out there.

13 Q. Could not strike against?

14 A. TWA LLC. So again, we said you can strike against your
15 company, your current company. But then the next question is
16 can we strike against the new company. And we said, we think
17 there is an excellent chance you cannot strike against the
18 new company.

19 Q. All right.

20 A. And I will say that in response to the first point,
21 members of the MEC sort of said, at various meetings, why
22 would we want to strike against TWA, which is in bankruptcy
23 and to the err go on the verge of collapse. That was their
24 question.

25 THE COURT: By the way, assuming they struck TWA

1 struck TWA Inc., they walked out the day of the decision and
2 the closing hadn't taken place, wouldn't that have entitled
3 American not to close under the terms of the acquisition
4 agreement.

5 A. I think so.

6 THE COURT: Isn't there a general provision in the
7 acquisition agreement that if there is a change in
8 circumstance.

9 A. A material change.

10 THE COURT: A material adverse change, they don't
11 have to close.

12 A. I think that is absolutely right, your Honor.

13 ATHE COURT: I think that is in.

14 A. I think it is in the asset purchase agreement.

15 Q. Still focusing on the March 21, 22, 2001 meeting, did
16 any members of the MEC or any of the negotiating committee or
17 merger committee people speak in favor of the idea of a
18 strike?

19 A. A strike against either company.

20 THE COURT: Generally, a strike against anybody.

21 THE WITNESS: I don't remember any MEC owe on I
22 remember a lot of questions about strike, want to go
23 understand it. I don't remember any MEC member saying we
24 want -- I think they wanted to know. Nobody said let's
25 strike, we want to strike. I think they wanted to know if

1 they went to LLC and they didn't have a contract and things
2 didn't work out well there, would they have the strike as a
3 weapon. And we told them there is an excellent chance you do
4 not have the right to strike.

5 Q. Did any of advisors say the idea of a strike would be a
6 good idea against either company, TWA Inc., or TWA LLC?

7 A. I don't think anybody offered an opinion about LLC, the
8 new company. I think advisors sort of slugged our shoulders
9 and said, as the MEC was, you know, it is an interesting
10 question why you would want to strike against a company that
11 is maybe on the verge of liquidation.

12 Q. Let's move on head, unless, does your Honor want a
13 break. I think we have been going an hour and a half. I
14 want to ask about the April 1 meeting now?

15 THE COURT: Let's take a break until a few minutes
16 after twelve, 12: 02 or 12:03

17 MR. FRAM: Thank you, your Honor.

18 THE COURT: Do not discuss the case amongst
19 yourselves. Keep an open mind until you have heard all the
20 evidence. All rise.

21 (Recess.)

22 THE COURT: You noticed I added a few lines about
23 the attorneys generally. Anybody have any objection did
24 that?

25 MR. PRESS: No.

1 THE COURT: You want me to tell the jury I didn't
2 mean it?

3 MR. FRAM: Thank you.

4 THE COURT: Everyone satisfied with my ad lib? I
5 thought that, as I was reading it, it was just, it would have
6 its intended -- it would not have an unintended effect of
7 emphasizing something in the way that it shouldn't. I
8 thought those comments in the instruction would mollify or
9 abate any consequence, the law of unintended consequences. I
10 thought we could avoid the law of unintended consequences.
11 As to making the statement as to all employers.

12 MR. FRAM: It was appreciated. Thank you.

13 THE COURT: Plaintiff is satisfied.

14 MR. PRESS: No problem, Judge.

15 THE COURT: Okay. See you a little after noon.

16 (Recess)

17 (The jury enters the courtroom.)

18 RICHARD SELTZER, resumes.

19 CONTINUED DIRECT EXAMINATION.

20 BY MR. FRAM:

21 THE COURT: Mr. Fram, you may continue.

22 Q. Mr. Seltzer, we are up to the meeting on April 1, 2001.
23 Do you recall the meeting?

24 A. Yes, there were meetings on April 1 and 2.

25 Q. Let's start with April 1. Where was was the meeting?

1 A. St. Louis. I believe it was at the MEC office.

2 Q. Who else was present?

3 A. There were a number of advisors, again, I believe
4 Michael Glanzer, David Holtzman, I know Clay Warner. And I
5 believe, Steve Tumblin. And I believe Bill Roberts was
6 another ALPA representative who was there.

7 Q. How did the meeting start, do you recall?

8 A. I got there very early. I think advisors sort of came
9 in one by one during the morning. And I think MEC members
10 came in later in the morning and the early afternoon and then
11 I think we started, in the afternoon, as I remember this was
12 not an MEC meeting to take action, this was an MEC, I don't
13 know, informational meeting or a meeting for them to go over
14 issues with advisors.

15 Q. And do you recall the first presentation or the first
16 people who spoke?

17 A. I think there was an update by the negotiating
18 committee. Ron Kiel was the chairman. About where the
19 negotiations with TWA were.

20 Q. Okay. Did you give any type of report or update on the
21 status of the Section 1113 motion at this meeting?

22 A. Yes. I reported that the 1113 -- that an objection to
23 the 1113 motion had been filed. This was Sunday, late on
24 Friday afternoon.

25 Q. What, if anything, did you say about the objection that

1 had been filed?

2 THE COURT: Who prepared the objection.

3 THE WITNESS: I prepared it, and then a draft of
4 drafts of it were circulated to Mr. Holtzman and Mr. Warner
5 and Mr. Tumblin, and I got comments back and, we got comments
6 back and I know Mr. Holtzman reported that Mr. Kiel had
7 suggested that some other things be added to it, so this was
8 sort of a group of people who were looking at it.

9 THE COURT: Then you incorporated those comments
10 and you were the one that filed it.

11 A. Actually, the local counsel in Delaware. I think it was
12 Saul Ewing filed it.

13 THE COURT: You were the point man.

14 A. I was the point man. It was before electronic file
15 filing, your Honor.

16 THE COURT: Now you press a button and it is filed
17 wherever you are.

18 A. Right.

19 Q. Did you mention Mr. Kiel had some input into the written
20 objections that were filed?

21 A. I remember that there was some part of either the
22 negotiation or pass concession or something that he thought
23 was missing from a draft. Mr. Holtzman reported Ron thinks
24 we should add such and such at some point.

25 Q. At at the meeting on April 1 can you describe the

1 argument that had been made in the objection.

2 A. I think I advised there were a number of, what I think
3 of as technical arguments. We also raised the argument that
4 was in the -- that related to the grievance, that you know,
5 it was ALPA's position that the company shouldn't have
6 entered into the asset purchase agreement without getting
7 ALPA's agreement. And that generally, now, it took the
8 position that ALPA thought that its seniority -- it shouldn't
9 have to waive these various provisions of the contract, along
10 with some technical, what I thought of as largely technical
11 objections.

12 Q. Did you talk to the members of the MEC on April 1, 2001,
13 about your view of, at that point, of how the 1113 motion was
14 likely to be decided?

15 A. Yes.

16 Q. What did you say?

17 A. I said in the strongest possible terms that it was my
18 belief the motion was going to be granted. I think someone
19 asked can you give a percentage and I and I said is there a
20 number higher than 99, that in light of the judge's decision
21 on the 12th that --

22 THE COURT: March 12.

23 THE WITNESS: March 12. I am sorry, your Honor.

24 A. -- that he had concluded that there was a very, very
25 strong likelihood, if not certainty, on liquidation if this

1 as asset purchase agreement with American didn't go through,
2 and with the fact that although American had not -- American,
3 and the new company, had not gone as far -- had -- and TWA,
4 had not agreed to the ALPA position on scope and
5 successorship, that there was this negotiation about the new
6 contract with the LLC. And that as I remember the
7 negotiating committee reported that they had finally gotten
8 all of TWA's, and TWA LLC's current position in writing, that
9 they that there were raises, there were contributions to a
10 pension fund at TWA, that there were a number of improvements
11 and sort of bringing the TWA pilots up at a certain point to
12 the level where the American pilots were.

13 And a grievance procedure. And a whole slew of
14 things that others who were involved in the negotiations
15 reported on more than I did. But ALPA had achieved in that
16 part of the negotiation, and the company and LLC had moved a
17 tremendous amount.

18 And based on that, and my view of where the
19 bankruptcy court was going to go in this transaction, and you
20 know, that the 1113 was going to be approved, and I made a
21 point at this meeting and other meetings to say, the
22 creditors have argued in opposing the approval of the sale,
23 that the employees were getting too much, that the creditors
24 were going to likely get nothing and the employees were going
25 the retiree benefits assumed, they were going to -- that they

1 were all going to be hired, that in effect it was an unfair
2 an unfair transaction.

3 And the Judge dealt with this in his decision. It
4 was an unfair transaction because the employees were getting
5 too much and the creditors were getting too little, and that
6 was an unfair treatment of creditors. The Judge rejected
7 that argument.

8 But I remember saying to them the Judge, who is
9 here arguments that you are getting too much, is not going to
10 put the transaction from jeopardy because you didn't get
11 everything that you want.

12 And that you had to sort of consider what he was
13 hearing from other parties in the case, and I remember saying
14 this, too, he is not a mediator, he is not a good guy who is
15 just out to help everybody. He is a bankruptcy Judge
16 following the bankruptcy law, and --

17 THE COURT: You don't want to use "good guy" and
18 "Judge" in the same sentence.

19 THE WITNESS: Not just a good guy, your Honor.

20 A. And that he had a major interest in avoiding a
21 liquidation, for a bankruptcy Judge, aside from -- and the
22 bankruptcy law is geared towards trying to reorganize and
23 trying to avoid liquidation and for any bankruptcy Judge to
24 have a huge company collapse, sort of on his watch, that is,
25 you know, that is not what the law, what the bankruptcy

1 law is geared towards and that is not what I thought Judge
2 Walsh wanted to happen in a case in front of him. For all
3 those reasons I thought ALPA was going to lose the 1113.

4 Q. Did any of the other advisors disagree with your
5 assessment of the likely outcome of the Section 1113 motion?

6 A. No. I specifically remember Roland Wilder saying I had
7 a tremendous amount of 1113 experience and if I said they
8 were going to lose, they were going to lose.

9 Q. Did any of the pilots ask questions about the Section
10 1113 process and the likelihood that the motion would be
11 granted?

12 A. No. I remember that there were some comments but I don't
13 remember about the process, or whether they, anyone differing
14 with -- at this meeting or a prior meeting, I can't identify
15 which member of the MEC, either the MEC or the committee,
16 somebody who was in court agreed that their view of Judge
17 Walsh is that this transaction was going to take place. And
18 I remember either a committee chair or a member of the MEC
19 saying just from watching the Judge in court and what he did
20 that this transaction was going to take place.

21 Q. Was that comment made in the context of a discussion of
22 the Section 1113 motion?

23 A. Yes, that he agreed, whoever -- that he agreed that the
24 11 -- ALPA was going to lose the 1113 because this Judge was
25 not going to let there be a major threat to the American

1 transaction.

2 Q. All right. Let's talk a little bit about the Wilder
3 litigation theory. Do you recall receiving at some point
4 before the meeting on April 1 a copy of Mr. Wilder's letter
5 of March 26, 2001?

6 A. Yes.

7 Q. Okay.

8 A. Letter to Captain Woerth.

9 Q. Yes. You have that in in front of you. It is in
10 evidence as J 41. I hope it is in the pile I gave you?

11 A. J 41 D.

12 Q. Yes.

13 A. I have it.

14 Q. And you have had an opportunity to review that meeting
15 before the meeting on April 1?

16 A. Yes, I did.

17 Q. What did you do to prepare for the meeting on April 1
18 with respect to that letter?

19 A. This letter was again raising the suggestion of a
20 litigation that I had concluded earlier was meritless, and
21 that the legal positions in here were incorrect, and
22 misleading. And I was surprised on to see it. And I
23 talked --

24 Q. I am sorry. Why were you surprised to see it?

25 A. I had never heard Mr. Wilder respond to the points I and

1 others had raised about which court this would be heard in,
2 and whether this lawsuit which was any leverage at all. In
3 my view, a meritless lawsuit that goes nowhere isn't
4 leverage. And I discussed, I think I had a phone
5 conversation with either Clay Warner or Dave Holtzman or both
6 at some point, again, before the meeting, again telling them
7 that --

8 Q. Before the meeting on April 1, 2001?

9 A. Yes, again telling them that I thought this was a
10 meritless proposal. It was the same meritless proposal
11 except now it was being proposed to the head of ALPA. And I
12 reviewed again with them from a bankruptcy point of view why
13 I thought it was meritless.

14 And they asked if I would prepare talking points
15 because I had mentioned some cases, and my analysis of those
16 cases, and they asked if I would prepare talking points that
17 they could review as well, and that would sort of, we have
18 now seen this two or three times, that would sort of
19 summarize my views of this.

20 Q. Did you in fact prepare some written talking points?

21 A. I did.

22 Q. I am going to show you what has been marked for
23 identification purposes as D 453.

24 THE COURT: D?

25 MR. FRAM: D, your Honor, it is newly marked. Just

1 for identification.

2 THE COURT: D 453.

3 MR. FRAM: Yes, your Honor.

4 THE COURT: I don't have a 452, by the way. Fram
5 /STPR-PL I thought I used it. I have another document that
6 is marked for identification only. That is.

7 THE COURT: This is 453.

8 MR. FRAM: Yes.

9 Q. Are these the written talking points you prepared?

10 A. Yes, they are.

11 Q. At what point had you completed preparing them?

12 A. Well, they are marked at the bottom the way documents
13 sort of reflect, on March 29, but I believe in reviewing my
14 billing for this period, that I began this on the 28th or 27.

15 Q. You say your billing. Can you describe what you mean by
16 your billing?

17 A. We submit monthly bills to ALPA and they separate by
18 each day what we did on that day and how many hours. So I
19 saw that a reference to talking points I think on the 28th.
20 Or the 28th or the 27 or both.

21 Q. All right. And did you circulate this document to
22 anybody else before before the meeting on April 1?

23 A. Yes. Actually next to this is a, the last page of this
24 is a --

25 MR. JACOBSON: Your Honor, I object to him talking

1 about the substance of this document until it has been
2 offered.

3 THE COURT: Yes, I think that is a fair statement.

4 Q. Without looking at the document do you recall
5 circulating to anybody?

6 A. Yes.

7 Q. Who did you send it to?

8 A. Clay Warner.

9 Q. So back to the meeting on April 1. Did Mr. Wilder get
10 some kind of presentation in support of his injunction
11 theory?

12 A. The only thing I remember Mr. Wilder saying, other than
13 that, if I said they were going to lose the 1113, then he
14 agreed they were going to lose the 1113, was that his
15 strategy had risk, but that he thought that, you know, that
16 American would not walk away from the transaction. He didn't
17 think there was any evidence, or anything that pointed to
18 American, ever walking away from the transaction --.

19 THE COURT: That is what Roland Wilder said.

20 THE WITNESS: Yes.

21 A. But I don't remember him responding to, for example, my
22 pointing out the case that said that if this kind of
23 injunction action would be in the bankruptcy court, and why I
24 didn't think, I thought the 1113 would take precedence over
25 an attempt at an injunction.

1 Q. Well, what was the downside of filing a lawsuit? You
2 file a law cite, it doesn't succeed. What is the big deal?

3 THE COURT: You are not offering 453?

4 MR. FRAM: It wasn't premarked. I can offer it.
5 There may be an objection because it wasn't marked as part of
6 the pretrial, your Honor.

7 Sure, I will offer it.

8 MR. JACOBSON: We object. It is not marked as part
9 of the pretrial.

10 MR. FRAM: Okay.

11 THE COURT: At least everybody is predictable.
12 That is good.

13 THE COURT: I am going to sustain the objection. I
14 am going to allow the testimony.

15 MR. FRAM: Thank you, your Honor.

16 Q. All right. So what is the big deal? You file a
17 lawsuit. It doesn't succeed. Why is there any downside to
18 it?

19 A. It -- because, one, Michael Glanzer who was the
20 financial advisor to the pilots, reported at this meeting and
21 I think he may have reported at a prior meeting at well, that
22 he had been in a meeting with American's --

23 MR. JACOBSON: Your Honor, I object at this point.
24 Sounds like he is asking for a current opinion as opposed to
25 what happened then and therefore this testimony is hearsay.

1 MR. FRAM: I am asking about what was discussed at
2 the meeting on April 1 of 2001.

3 THE COURT: Do you understand, Mr. Seltzer, that
4 the objection is to some modern thought or something? The
5 question is limited.

6 A. To what was said.

7 THE COURT: To things that were actually said by
8 somebody at the meeting at which, you know, various people
9 you have identified as being there.

10 A. It was said. It was said, your Honor.

11 THE COURT: To the extent that it is understood
12 that we are talking about what was said at the meeting. I am
13 going to allow it.

14 Q. That was the intent of the question. Please.

15 A. Mr. Glanzer said at this meeting, and he may have said
16 it the 21 or 22 meeting, too, and he reported this to the
17 MEC, that I had had a meeting but the status of the case with
18 the chief financial officer of American Airlines, who
19 reported that the chief financial officer told Michael that
20 he, the chief financial officer, opposed this transaction,
21 that there was a fax within American that did not think this
22 was a very good idea.

23 THE COURT: This being the --

24 A. The acquisition. And Mr. Glanzer, and Mr. Glanzer
25 reported that in light of that and the continuing losses at

1 TWA, that if the pilots wanted the American transaction to
2 take place, that they should do everything they could to move
3 it forward quickly and get to a closing so American could not
4 change its mind. And that filing frivolous lawsuits that are
5 aimed at delaying things and that could potentially give
6 ammunition to the people at American who were opposed to the
7 transaction was not a good idea.

8 Q. Did any of the members of the MEC comment on this
9 exchange where Wilder said, I don't think American will walk
10 away and Glanzer responded that he had information to suggest
11 otherwise?

12 A. I don't remember a particular reaction to that.

13 Q. Do you recall Sally Young making some comments about the
14 risks that American might walk away?

15 A. I remember her making comments about risks involving
16 American.

17 Q. What do you recall her saying at the meeting on April 1
18 of 2001?

19 A. Specifically remember her saying that it was important,
20 as ALPA went forward, for -- to try to keep, however you want
21 to put it, the good opinion, a positive view of Don Cardy,
22 who was the head of American Airlines, towards the TWA
23 pilots, and as a positive, constructive part of the new
24 airline, and that she didn't think that, I don't know whether
25 it was in particular relation to the lawsuit idea, but that

1 she didn't think ALPA should do anything that would endanger,
2 or that the positive view that she thought Don Cardy had of
3 the TWA pilots.

4 Q. Did any of advisors support Mr. Wilder's idea of trying
5 to enjoin the entire transaction?

6 A. No.

7 Q. Did any of the members of the TWA MEC on April 1 support
8 the idea of trying to enjoin the entire transaction?

9 A. No.

10 Q. April 2. Were you present at the formal meeting of the
11 MEC on April 2, 2001?

12 A. Yes.

13 Q. Was there any further discussion about the likely
14 outcome of the Section 1113 motion and the other topics that
15 had been discussed on April 1 of 2001?

16 A. There may have been but that, I don't have a clear
17 memory of that. There just may have been a general sort of
18 summarizing but I don't have a particular memory of it.

19 Q. If the MEC had voted on April 2, 2001, to pursue the
20 Section 1113 hearing, would you have been prepared to go
21 ahead on April 6?

22 A. Absolutely.

23 Q. What preparations, if any, had you made prior to April
24 one to get ready for that hearing?

25 A. We obviously had prepared the objection and filed the

1 objection. Which preserved ALPA's rights to oppose it at a
2 hearing.

3 I had discussed with Mr. Holtzman, I think the week
4 before and possibly before that, that at if the MEC wanted to
5 go ahead with the 1113 hearing that as soon as the meeting
6 was over, on the second, I guess, all the MEC members were
7 there, the committee chairs were there, Mr. Shwartz was
8 there, the vice chairman, that we would sit down and focus
9 on choosing either one or two witnesses to be the key
10 witnesses at the hearing.

11 We would make that determination, and we would
12 begin prepping the witness for the hearing.

13 And I remember commenting that my view is that
14 Captain Shwartz had, he had testified before this Judge,
15 originally in support of the American transaction, that he
16 had the experience of testifying in the bankruptcy court, the
17 Judge had seen him before, that he might be the correct key
18 witness.

19 I think there was some discussion of whether Mr.
20 Singer would be a good witness or an alternative witness or
21 an additional witness.

22 Q. Is that David Singer, one of the Council 2 reps?

23 A. Right. And we sort have had determined that as soon as
24 the MEC meeting was over and if they decided to go forward we
25 would immediately go into trial preparation mode.

1 Q. Let's talk about the tone of the meetings on April 1
2 and April 2, 2001. Did any of advisors refuse to answer any
3 aof the questions that were posed by the members of the TWA
4 MEC?

5 A. No.

6 Q. Did any of advisors tell the members of the MEC how they
7 had to vote?

8 A. No.

9 Q. Did any of advisors threaten any of the members of the
10 MEC?

11 A. No.

12 Q. In your view did any advisors put any pressure on any
13 members of the MEC to decide any issues in any particular
14 way?

15 A. No.

16 Q. Did any of the members of the MEC say they felt pressure
17 to follow any particular advice that was given?

18 A. No.

19 Q. Did any of the members of the MEC say that they didn't
20 understand the advice that was being given?

21 A. No.

22 Q. Based upon your observations of people, the body
23 language and the like, did any of the members of the MEC
24 appear to you to be confused or not to understand the advice
25 that was being given?

1 A. No.

2 Q. The outcome of the vote on April 2, 2001, was to do what
3 with respect to the proposed collective bargaining agreement
4 that had been put out there by TWA LLC?

5 A. I think it was to attempt, I think it was a negotiating
6 committee that was sent to finalize the agreement, to make
7 sure that every single -- I think most of the documentation
8 of it was done, but to make sure that every last aspect was
9 done, fully documented and was what the MEC had been told was
10 available.

11 They authorized the MEC chair to sign it, if and
12 when everything was completed, and I think counsel is
13 authorized to begin talking to TWA and I think American, I
14 don't remember if it was just TWA and/or, to enter into a
15 stipulation that in effect recognized the agreements that had
16 been reached, recognized that the waiver was taking place and
17 recognized that the pre conditions to the sale had been met.
18 There was no longer a collective bargaining agreement basis
19 for American not to go forward.

20 Q. Did you learn anything between April 2 and April 6 that
21 you thought was relevant to the advice you had given to the
22 MEC about the likelihood that Judge Walsh was going to grant
23 the Section 1113 motion?

24 A. Yes.

25 Q. What did you learn?

1 A. On April 2 Judge Walsh issued a long decision denying, I
2 believe it was the committee, it may have been, it was other
3 entities, too, request for a stay of his approval of the sale
4 to American. And unlike his usual practice of reading
5 opinions into the record, he sort of did it in an informal
6 way because I think he started the opinion with dear counsel,
7 like it was a letter, but he issued a written decision, an
8 extensive decision, denying the stay and reviewing the entire
9 history of the bankruptcy, from the first day, reviewing the
10 precarious shape that TWA --

11 MR. JACOBSON: I am going to object to this. I
12 believe it is not relevant. As I understand this is
13 something he didn't learn until after the April 2 meeting
14 and vote was taken, if I understood the question correctly.

15 MR. FRAM: Your Honor, it is before the collective
16 bargaining agreement was finalized, the question was did he
17 learn anything that I am backed on the advice that he was on
18 the advice that was given.

19 THE COURT: Friday to reframe it. I think that is
20 too broad, the sources of information.

21 MR. FRAM: I will try to do this without leading,
22 your Honor.

23 THE COURT: I understand the problem.

24 Q. Did you learn anything before the collective bargaining
25 agreement was finalized, and the 1113 motion was formally

1 resolved, that verified in your mind the soundness of the
2 advice you had given?

3 A. Yes.

4 Q. Let me hand up what had been premarked as D 288. I
5 think it may have been marked for identification before?

6 THE COURT: 288.

7 MR. FRAM: 288, your Honor.

8 Q. And is this the opinion of Judge Walsh that you referred
9 to?

10 A. Yes.

11 Q. What about this opinion verified in your mind the
12 soundness of your advice that the 1113 motion should not be
13 fought, should not be contested.

14 MR. JACOBSON: I object, your Honor. This is post
15 advice verifications aren't relevant to anything in this
16 case.

17 THE COURT: I am going to allow it. Go ahead.

18 A. It confirms my view as to the judge's serious concern
19 with the likely liquidation of the company if this didn't go
20 through, and it did so extensively. Many, many page opinion,
21 reviewing everything that happened in the case.

22 I also found directly on the 1113 point.

23 Q. Pardon me.

24 MR. FRAM: Your Honor, I am going to move D 288
25 into evidence, please.

1 MR. JACOBSON: I object to the admission of a court
2 opinion in evidence, your Honor.

3 MR. FRAM: I would like to know the basis of the
4 objection.

5 MR. JACOBSON: It is hearsay. It is a bankruptcy in
6 which both the buyer and seller were in agreement on what
7 would happen.

8 THE COURT: Well, this was part of the, it is a,
9 the background or the reality of the advisors, you know,
10 before the Judge is scheduled to start the hearing, which was
11 April 6 on the 1113. This is --

12 MR. JACOBSON: April 2, your Honor.

13 THE COURT: His job is specifically to advice on
14 the 1113 motion. I think anything that he relies on in
15 giving the advice he did -- did you discuss this with this
16 opinion on others involved, with other advisors or other MEC
17 members, or other committee members.

18 A. I discussed it with other advisors.

19 THE COURT: What?

20 A. I discussed it with other advisors. In fact, while, it
21 was while the MEC meeting going on or after, but I remember
22 being in St. Louis on the second and somebody getting word,
23 it may have been the company calling somebody at the MEC but
24 somebody reported to me that the Judge has issued, has denied
25 the request for a stay. I didn't get the opinion itself

1 until the next day or the day before but I remember hearing
2 while I was still in St. Louis that the Judge had issued a --

3 THE COURT: I am going to let 288 in.

4 MR. FRAM: Thank you.

5 Q. Were you saying, Mr. Seltzer, that there was some
6 comments by Judge Judge Walsh in this April 2 opinion about
7 the sending Section 1113 motion?

8 A. Yes. I guess it is page 11 of the copy that I have in
9 front of me. At the bottom of the page, can I read a little
10 bit of it.

11 Q. Go ahead, it is in evidence?

12 A. There is absolutely no evidence that TWA is attempting
13 to bypass the requirements of Section 1113. As I found
14 before, the simple fact is that TWA is a failing enterprise.
15 Its likely end, in my opinion, will be either a partial
16 survival as part of American or a liquidation resulting in no
17 enterprise value, and a consequent material loss to all
18 nonpriority general unsecured creditor classes.

19 Then he said this, which is what I found particularly
20 significant.

21 "The end result of what will happen during TWA's
22 1113 negotiations is dictated by TWA's inability to survive
23 as a stand-alone enterprise. There is simply no evidence to
24 suggest that TWA is proceeding in bad faith regarding its
25 1113 negotiations."

1 My conclusion from that is that the Judge was
2 reaching out to make some comments about the 1113
3 proceedings, even before they were scheduled to start.

4 Q. So was the 1113 application, was it even before Judge
5 Walsh as part of the motions he was deciding?

6 A. No. I think there were some objections by some Israeli
7 employees, or Israeli employees --

8 THE COURT: Of whom?

9 THE WITNESS: Of TWA, and I think the Israeli
10 operations were going to be closed and they were raising
11 objections, but what struck me was that this was very general
12 language that the Judge used about the 1113 process.

13 Q. Mr. Seltzer, did you know during the timeframe that we
14 were discussing, early 2001, that the prior year late 2000,
15 ALPA had adopted the so-called unity resolution?

16 A. No.

17 Q. Did anybody tell you during the period which you were
18 representing the MEC and ALPA during the bankruptcy
19 proceeding that ALPA had a long term goal of trying to bring
20 the American pilots back to ALPA?

21 A. No.

22 Q. Did anybody tell you what advice you should give to the
23 TWA MEC or the TWA pilots?

24 A. Absolutely not.

25 Q. Did anyone try to influence the advice that you give to

1 TWA pilots or the TWA MEC?

2 A. Absolutely not.

3 MR. FRAM: Thank you thank you. I have nothing
4 further on direct.

5 THE COURT: Cross examine.

6 MR. JACOBSON: Thank you, your Honor.

7 CROSS EXAMINATION.

8 BY MR. JACOBSON:

9 Q. Mr. Seltzer, I would like to ask you a few more
10 questions about your background first before I get into the
11 meat of the cross examination. Okay, sir?

12 A. Absolutely.

13 Q. You are a lawyer at what law firm?

14 A. Cohen, Weiss & Simon.

15 Q. Cohen, Weiss and Simon represented ALPA since when?

16 A. I think since the 1930s.

17 Q. You or your law firm have been their general counsel
18 since then, correct?

19 A. I think since then. At some point we became general
20 counsel. We have been general counsel for a long time.

21 Q. For a long time and still are today?

22 A. Yes.

23 Q. All right. And let's go to the bankruptcy. You had
24 mentioned that you thought the debtor in possession financing
25 was unusual because the financing was by American Airlines

1 and not a bank or other financial institution, correct?

2 A. Yes.

3 Q. All right. Now, you understood, correct, that TWA and
4 American Airlines had entered into an asset purchase
5 agreement, for which situation by American of all of TWA's
6 assets and part of that agreement required this bankruptcy be
7 filed?

8 A. Yes.

9 Q. And so it was part of an agreement, the bankruptcy was
10 part of an agreement between TWA and American Airlines?

11 A. Yes.

12 Q. All right.

13 A. It wasn't surprising in light of the agreement. It was
14 surprising in light of how that kind of financing is
15 generally provided in bankruptcy.

16 Q. Right. But where a bankruptcy is filed as an agreement
17 as part of a seller and a buyer's agreement to do a
18 transaction, is not unusual in those cases for the buyer to
19 finance the bankruptcy?

20 A. Those kind of agreements right before filing are
21 unusual. And I don't know that, I can't name any others,
22 frankly, that, where the financing, there may well have been
23 but it was an unusual, in my bankruptcy practice it was very
24 unusual to see one company providing the DIP financing to
25 another.

1 Q. That is the company that is going to be buying all the
2 assets?

3 A. In light of the transaction, it was not unusual. In
4 light of what generally happens in bankruptcy, it was
5 unusual.

6 Q. In light of the transaction, we are talking about this
7 transaction, not about the whole universe of bankruptcies,
8 correct?

9 A. Correct, but there are many transactions where a sale
10 takes place and the DIP financing has been provided by a
11 bank.

12 Q. That is when the buyer wants to get finance to go do the
13 purchase, correct? If the buyer is able to buy without doing
14 that, they want to use their cash they can do so, right?

15 A. I am not sure I understand your question.

16 When there isn't a bank willing to provide
17 financing, then a debtor has to try to find somebody else who
18 will provide financing.

19 Q. Not all buyers want to borrow to buy, correct?

20 A. Some --

21 Q. Some buyers want to buy for cash?

22 A. You mean by providing cash.

23 Q. Yes, some people want to buy for cash. Correct?

24 A. Some people pay cash. That's correct.

25 Q. Thank you. All right. Now, you talked a little bit

1 about the bidding procedure that was set up in the bankruptcy
2 court for the bidding on these assets.

3 A. Correct.

4 Q. And you know the bidding procedure was set up, isn't it
5 a fact that when there is a preferred buyer as there is here,
6 the bidding procedures are often crafted so that the
7 preferred buyer has a much better ability to satisfy the
8 terms than anyone else out in the world?

9 Q. You have been involved with bankruptcies. You know the
10 that is the reality?

11 A. I have, I have. There is some advantage but I will say
12 that there was extensive negotiations with the creditors
13 committee in this case and the chief District Court Judge of
14 Delaware found that these bidding procedures were completely
15 fair.

16 Q. They may be fair but they were structured to give
17 American Airlines an edge in the bidding because they were
18 the preferred buyer, correct?

19 A. I would have to go back and look at the document to see
20 whether I thought they provided an edge.

21 Q. Well, when Icahn and his group came in and made their
22 bid, American upped its bid by about \$250 million, correct?

23 A. That's correct.

24 Q. There was a lot of interest on the part of American to
25 buy t ahis?

1 A. There was.

2 Q. Now, you talked about things that happened at different
3 meetings. But isn't it a fact, sir, that you don't, you
4 can't particularize what happened at one meeting as opposed
5 to what happened at another meeting?

6 A. I can, I know generally what I spoke about. I also
7 looking at the agendas of each meeting which I looked at in
8 the last month in reviewing the agendas and my billing notes
9 for each day and the timing of the meetings, I can remember,
10 I remember that at some point, in my deposition, I wasn't
11 sure if there was a meeting between the 15th and the first.

12 When I look back and look at the agendas and my
13 billing notes I realize, and I remembered that there was a
14 meeting on the 21 and 22, and that the topic of that meeting
15 was the 1113 filing.

16 Q. All right. Isn't it a fact that you had no independent
17 memory of what you said at each of these meetings but you
18 reconstructed that memory by looking at the agendas and your
19 billing records for those meetings and trying to figure out
20 what would have been reasonable?

21 A. No. Looking at those records beings I now remember
22 what happened, not every detail, but I remember what happened
23 at those meetings.

24 Q. Do you recall your deposition, right?

25 A. I do.

1 Q. Back in September of 2008?

2 A. I do.

3 Q. September 19, in particular?

4 A. I don't remember it was the 19. I remember that was the
5 general time.

6 Q. Let me give you a copy of it so you have it there, all
7 right, sir?

8 A. Sure.

9 Q. Let me ask you this question. Do you recall about how
10 many times you attended all meetings of the MEC?

11 A. You are asking me now.

12 Q. Yes, sir, how many times have you attend the formal
13 meetings of the MEC?

14 A. Of the TWA MEC.

15 Q. Yes?

16 A. Does that include calls or in person.

17 Q. What do you consider a formal meeting?

18 A. I consider a meeting to be a meeting in person.

19 Q. All right then. How many times do you think you
20 attended formal in-person meetings of the MEC?

21 A. I attended three of the full MEC, and then I attended on
22 the 14th a meeting of the committee as an MEC advisors, and
23 the MEC officers and committee chair.

24 Q. Now, let's set aside for a second the April 2 meeting
25 where the scope waiver was voted on. At any of the prior

1 meetings that you talked about, did anyone advise the MEC
2 that they ought to waive their scope in their contract?

3 A. No. I don't -- I am sorry. Before April 1?

4 Q. Before April 2, before the meeting when they voted?

5 A. I know David Holtzman had a written set of
6 recommendations. My best recollection is that they were made
7 at the April 1, 2, meeting. They could have been made at an
8 earlier meeting but my memory is that they were made at the
9 April 1, 2 meeting.

10 Q. You blur those two meetings together in your testimony?

11 A. No. There was a meeting on April 1 of advisors, and
12 the MEC, but it was not a formal meeting. I thought of it
13 was the April first/second meeting. When I looked at the
14 agenda and the invitation it refreshed my recollection that
15 we were asked to come there to talk to the MEC officers and I
16 specifically remember getting there very early in the morning
17 before anybody else, advisors coming in in the morning, and
18 the MEC coming in in the late morning and early afternoon.

19 Q. All right. You said you reviewed these agendas and your
20 time records what, a month ago or two months ago?

21 A. Within the last six weeks.

22 Q. Within the last six weeks. So if we were sitting here
23 eight weeks, if you were here eight weeks ago without that
24 you weren't be able to tell us who was at that April 1
25 meeting or who was at the April 2nd meeting, correct?

1 A. I think I would have said that the MEC members were at
2 both. I am not sure I would have remembered that the first
3 meeting was more an informational meeting and the second one
4 was a more formal one.

5 Q. You wouldn't be able to tell us if you were sitting here
6 eight weeks ago what was discussed at each of those days,
7 could you, sir?

8 A. No. But what I remembered as I testified at my
9 deposition --

10 Q. That was a no, correct?

11 A. That was a no.

12 Q. All right, thank you.

13 Before you made your filing in opposition to the
14 1113 motion, had you expressed any views at the MEC about the
15 chances of success on the 1113 process.

16 A. I expressed general views that we were -- I expressed
17 general views that we were not likely to win on the scope
18 provision, but that we didn't have the actual motion yet. We
19 didn't have the judge's decision on the transaction until the
20 twelve. So that what I said was tentative because we didn't
21 even know until the 12th.

22 THE COURT: Of March.

23 THE WITNESS: Of March. I am sorry, your Honor.

24 A. That the Judge, we thought it was very extremely likely
25 he was going to approve the American transaction, he had not

1 approved the American transaction yet.

2 Q. I would like you to look at page 56 of your deposition,
3 sir.

4 A. Yes.

5 Q. I would like to direct your attention on page 56, the
6 question asked on line 6.

7 A. Yes.

8 Q. I ask you whether you were asked this question in your
9 deposition and gave this?

10 "ANSWER: Question: Did you, do you remember
11 before a filing was made expressing any views on the
12 likelihood of success on the 1113 process?"

13 Did you give this answer?

14 "I know I did at the April 2 meeting. I believe
15 that there were earlier discussions at 1113, and I believe
16 that there were discussions of difficulties succeeding in
17 1113. I can't specify a meeting that was particularly said
18 at a particular meeting."

19 Is that the question you were asked and answer you
20 gave?

21 A. Yes.

22 Q. All right. Now, did you express to your clients the
23 difficulty, now we are talking about difficult at 1113
24 filing, did you discuss with them the difficulties they would
25 face in the 1113, when do you first make that clear to them?

1 A. Could you repeat the question?

2 Q. When did you first make that clear to them, the
3 difficulties they would face in the 1113?

4 A. I believe the first time it was raised and the first
5 time I remember seeing it raised was in the conference call
6 with advisors on March first, I believe, and then the first
7 time at a meeting, again a meeting with advisors of March
8 14th.

9 Q. Let me direct your attention to page 68 of your
10 deposition, line 9, sir. And ask if you were asked this
11 question and gave this answer?

12 All right. The question is "Well, we went through
13 all of those bankruptcies and well, no, that is just pilot
14 bankruptcies. Okay.

15 "So you would have expressed to your clients the
16 TWA MEC the difficulties they would be faced if there was
17 1113 filing, and you believe you made that clear to them?"

18 And you gave the answer, "As I said, I know I did
19 at the April 2 meeting."

20 Was that the question and answer, sir?

21 A. Yes. And the next question and answer is "Right, and I
22 believe I did it at earlier meetings."

23 Q. But you did it at the April 2 meeting?

24 A. Right. And then I said it I did it at earlier meetings
25 as well. That is the next question and answer.

1 .

2 MR. FRAM: Could we read a couple more lines.

3 THE COURT: Well, I think he has --

4 Q. He has taken care of it.

5 THE COURT: We call that self help. As long as he
6 doesn't try to go on strike.

7 Q. You talk a little bit about some research that you had
8 people do for you in connection with the 1113 and Roland
9 Wilder's theory and the rest of it, right?

10 A. It was less the 1113 -- it wasn't with the 1113, it was
11 less with 1113 than it was with the questions that were being
12 posed about various legal situations, if the assets were
13 transferred to TWA LLC. And there wasn't a contract in
14 effect.

15 Q. All right.

16 THE COURT: You mean if the 1113 had been granted,
17 the supposition, if the 1113 was granted --

18 A. Right, right.

19 Q. Now, the brief that you filed on the Friday before the
20 April 2 meeting, March 30?

21 A. Correct.

22 Q. In that brief you expressly told the Court, the
23 bankruptcy court, that the TWA pilots would have the right to
24 strike if 1113 was granted. Is that correct, sir?

25 A. That's correct, and that is what I am saying today.

1 Q. Now, you were involved in part in a discussion at your
2 law firm just as you had people assisting you and you
3 following me in discussions, you yourself got involved in
4 other discussions on legal issues relating to ALPA and TWA
5 MEC. TWA LLC, correct?

6 A. Yes.

7 Q. In fact your firm because you do a lot of work for ALPA,
8 which is a significant client of your firm, correct?

9 A. Yes.

10 Q. You often have discussions on legal issues facing ALPA,
11 correct?

12 A. When you say you, you mean me?

13 Q. You personally participate?

14 A. I don't.

15 Q. You don't?

16 A. I participate generally on the bankruptcy cases that I
17 am involved with, and if I am doing a litigation and there is
18 a bankruptcy question. I am not the person who has -- I am
19 not the person who has day-to-day contact with ALPA or
20 reviews ALPA matters generally.

21 I have specific assignments.

22 Q. All right. But you were part of a discussion within
23 your law firm about the risk ALPA would face if it merged
24 with the Allied Pilots Association with respect to a 45
25 million dollars fine that was outstanding against the APA.

1 Correct?

2 A. I had discussion based on my bankruptcy experience.

3 Q. Right. You were bringing the bankruptcy part of the
4 discussion, the information to the discussion?

5 A. Yes. And I do not remember, I remember it had to do
6 with some sort of transaction involving a, or potential
7 transaction involving ALPA and the APA. I don't remember
8 whether it was a merger or what it was. I was asked a
9 question about the survival of liability.

10 Q. Take a look at your deposition, page 35. Perhaps that
11 will refresh your recollection as to what that particular
12 transaction you are discussing was.

13 THE COURT: Line?

14 MR. JACOBSON: Look at line 6 of page 35.

15 THE WITNESS: Yes.

16 Q. Does that refresh your recollection as to what type of
17 combination or interaction with the APA that ALPA was
18 concerned about at that time?

19 A. Yes. I said an affiliation merger or whatever with APA.

20 Q. All right. And you are focusing --

21 A. That refresh is my recollection of what I just said.

22 Q. And your view was that it would be very difficult to
23 eliminate that 45 million dollars liability through the
24 bankruptcy process, correct?

25 A. I said based on bankruptcy cases where unions had

1 attempted to transfer liabilities, that it appeared that
2 there were cases out there that would make it very difficult
3 to transfer a liability, to evade a liability of one union
4 when there was some sort of affiliation or transfer of
5 membership or whatever. That is really how it came up in the
6 bankruptcy context.

7 Q. I am going to hand you a document that is previously
8 marked as exhibit P-264.

9 THE COURT: P-264.

10 MR. JACOBSON: I have a copy.

11 THE COURT: That has been marked for
12 identification.

13 MR. JACOBSON: It is not in evidence yet, your
14 Honor.

15 THE COURT: Right.

16 Q. Do you have that document. Have you had a chance to
17 look through it?

18 A. Yes.

19 Q. Is this the fortunately that looks like a typical form
20 for a Cohen, Weiss, internal memorandum on legal analysis?

21 A. It looks like the form for a memo, yes.

22 Q. And in fact if you look at the bottom there is a, I
23 guess a document number, it has your firm initials beginning
24 on it. CWS?

25 A. Yes.

1 Q. Above that there is a line which has a date on the right
2 and an internal document number on the left?

3 A. Yes.

4 Q. All right. Now, this document is addressed to a number
5 of initials. I want to see who these people are at your firm
6 and see if they are at your firm. The first initial is BHS?

7 A. Bruce Simon.

8 Q. Bruce Simon. Is that the Simon in the name?

9 A. Yes.

10 Q. Next SBM?

11 A. Stephen Maldoff.

12 Q. Couldn't hear you?

13 A. Stephen Maldoff.

14 Q. Who is he?

15 A. A partner.

16 Q. MEA?

17 A. Michael Abrahm, who is a partner in the firm.

18 Q. Where is Michael Abrams?

19 A. I am sorry?

20 Q. Where is he now?

21 A. Sitting in the courtroom.

22 Q. That gentleman over there?

23 A. Yes.

24 Q. Thank you.

25 A. It is Abrahm, not Abrams.

1 Q. Singular?

2 A. Right.

3 Q. Next initial, SD, who is that?

4 A. Susan Davis.

5 Q. Last one is DEH?

6 A. It is an associate who has left and her first name was
7 Didi, and I am having trouble remembering her last name.

8 THE COURT: It was all lawyers in your firm?

9 A. Yes, sir.

10 THE COURT: Whatever the status is, they are all
11 lawyers in your firm.

12 THE WITNESS: Yes, your Honor.

13 Q. Turn if you would to page 6. I want to see if this is
14 material that you supplied information on regarding
15 bankruptcy.

16 MR. FRAM: Your Honor. Can we approach on this
17 one?

18 THE COURT: Excuse me?

19 MR. FRAM: I object to questions about the memo.
20 It is not in evidence. I object to it going in evidence on a
21 number of grounds. I object.

22 THE COURT: Want to go to sidebar?

23 MR. FRAM: Yes. Do you mind?

24 THE COURT: No.

25

1

(Sidebar).

2

3

MR. FRAM: May I, your Honor.

4

THE COURT: All right. Yes.

5

6

MR. FRAM: It is my objection. First of all there is no indication he received the memo. Mr. Jacobson objects.

7

8

THE COURT: I was going to -- it is funny, I withheld asking that question. I was surprised that he himself is not a recipient.

9

10

MR. KATZ: No, he is not.

11

12

THE COURT: Since he clearly was playing a major role for the firm in the issues.

13

14

MR. FRAM: The memorandum is dated November 6 which is before there is any issue about --

15

THE COURT: 2000.

16

MR. KATZ: He wasn't playing a major or role.

17

MR. JACOBSON: I am trying to lay a foundation.

18

19

THE COURT: I went to page 5 to ask if this is material he contributed to the memo.

20

THE COURT: What do you get from that?

21

22

THE COURT: Being if I ask him if he got to see the material after it incorporated his material. If it did --

23

24

25

MR. FRAM: What is the relevance of any of that? He already testified about the fact that some research was done to see whether the liability would follow the merger,

1 but that was in late 2000. So how does he add anything to
2 that?

3 THE COURT: I mean --

4 MR. JACOBSON: Your Honor, I can try to see if he
5 has seen the memo, if not, I will lay the function for it
6 being a business record. I think it is important and I would
7 like it in evidence.

8 THE COURT: Why is it important? I am trying to
9 figure out, if there was a conflict, the conflict arose the
10 day the American signed to acquire TWA Inc. assets, which was
11 January 6, I something like that. This is two months earlier
12 at a time when there is no dispute, the testimony who had the
13 unity resolution. And they actually spoke to him.

14 MR. JACOBSON: Your Honor, the reason why this is
15 important is that this memo, particularly at page 3 of the
16 memo, lays out exactly the method that they used in approach
17 goes this APA merger. Getting American into ALPA. It says
18 the merger agreement is not going to work because of
19 liability.

20 They need to go with collection of authorization
21 cards and in order to avoid successorship issues --

22 THE COURT: What are you reading?

23 MR. JACOBSON: Page 3.

24 THE COURT: Three.

25 MR. JACOBSON: Three bullet points, top of the page,

1 layout the method. That was in fact followed. I want to
2 show that they keep saying that these 2:00 a.m. pilots or
3 group of American pilots are operating on their own. This
4 says the method you have to use is to make sure you have
5 individual American pilots operating on their own. Don't
6 have the officials of the APA doing it.

7 THE COURT: I understand the point.

8 MR. JACOBSON: I am laying a foundation.

9 MR. KATZ: It is an internal Cohen, Weiss memo and
10 nothing more than that.

11 MR. JACOBSON: They are the general counsel of the
12 union. They call themselves that, have been for years, maybe
13 not to 1931 but for years and years.

14 THE COURT: This isn't conveyed to the union in any
15 way, the answer is so what.

16 MR. JACOBSON: It is responding to questions
17 directed to them by the union, particularly by Duane Woerth
18 and John Cohen, and this is their analysis. And I think a
19 reasonable inference is that when you ask your lawyer to
20 solve the problem, and they work on a memo to solve the
21 problem and, that gives the solution that that solution is
22 likely passed on to the client, particularly here when the
23 client engages in activity consistent with the solution.

24 THE COURT: Let's find out if it was passed on to
25 the client.

1 MR. JACOBSON: I am trying to get a foundation about
2 his knowledge.

3 THE COURT: This is to me such a huge point has
4 been made by the defense, that got me into trouble, a huge
5 point has been made by the defense that only mergers is the
6 right way, they wouldn't consider a card campaign. And here
7 you have general counsel saying no, the only way to go is a
8 card campaign.

9 I am going to let you explore it a little further.
10 Again, he can't say what he doesn't know.

11 MR. JACOBSON: I understand.

12 THE COURT: If you want to subpoena another witness
13 or call another witness.

14 MR. FRAM: Your Honor, could I add to that, if you
15 recall, the fine gets resolved in April of 2001. We have
16 testimony. It gets resolved and is taken care of. The card
17 campaign doesn't begin until after that.

18 THE COURT: I don't know when the card campaign.

19 MR. FRAM: We have Clark and Hunnibell, the card
20 campaign does not begin.

21 MR. KATZ: From the middle of May.

22 MR. FRAM: I think the connection he wants to make
23 is --

24 THE COURT: That is argument.

25 MS. RODRIGUEZ: When it is final, the fine is

1 resolved is not clearly in the record. You may know when it
2 is resolved.

3 MR. FRAM: Oh, it is.

4 THE COURT: I am going to let you explore it..

5 (In open court)

6 MR. JACOBSON:.

7 Q. Mr. Seltzer, there came a day that your law firm
8 received a subpoena for documents relating to this case?

9 A. That's correct.

10 Q. And you were the person who, at least one of the
11 partners who took responsible for responding to that
12 subpoena?

13 A. That's correct.

14 Q. And you, did you personally search through the files of
15 your law firm for the documents?

16 A. Yes.

17 Q. And you then had the documents that you produced stamped
18 and marked?

19 A. Yes.

20 Q. All right. And is in document here one of the documents
21 that you found in the file of Cohen, Weiss and produced to us
22 in discovery in this case?

23 A. Yes.

24 Q. And are you one of the, to use the legal phrase,
25 custodian of records at Cohen, Weiss, a person who has access

1 and ability to retrieve and store documents there?

2 A. Yeah, I guess so. I never heard that phrase used in
3 that way, but yes.

4 Q. And tell the jury the usual process at Cohen, Weiss for
5 preparing and storing legal memoranda like the documents
6 here, exhibit P-264?

7 A. It was generally put into a red folder, of some type in
8 connection with the case, in connection with whatever matter
9 it was involved.

10 Q. Are these documents important to Cohen, Weiss in the
11 operation of his law firm and law business?

12 A. Yes.

13 Q. And do you maintain copies of these in your files so
14 that you refer to them in order to properly serve your
15 clients and their point of views?

16 A. Could you repeat the question?

17 Q. I will try. Try to rephrase it.

18 Do you keep, does Cohen, Weiss keep documents like
19 this document in its files for, in the regular operation of
20 its business as a law firm so that it can properly serve its
21 clients.

22 A. Yes.

23 MR. JACOBSON: Your Honor, I would like to offer
24 this document now as a business record of Cohen, Weiss law
25 firm.

1 MR. FRAM: Same objection we discussed at sidebar.
2 That doesn't mean it is admissible.

3 THE COURT: Who is RSS?

4 A. Robert Saddleson, another partner at Cohen, Weiss, it is
5 not me.

6 THE COURT: I notice his name is on two lists, even
7 though the first word in the memo are his initials.

8 A. I don't know. I didn't draft this and I wasn't a
9 recipient of it.

10 MR. FRAM: The hearsay issues beyond the 1113, your
11 Honor.

12 THE COURT: Do you know whether the substance of
13 this memo was conveyed to ALPA, or ALPA officials.

14 A. I don't.

15 THE COURT: I am not saying that there won't be a
16 way to get this in. But this witness is not the recipient of
17 it. I don't think he is referred to in here. He doesn't
18 know what was done with this. Whether this is even the last
19 word. Sometimes -- who is Michael Downey?

20 A. He was an associate.

21 THE COURT: Sometimes an associate, the advice
22 changes:

23 I know the argument is it is a business record.
24 But this doesn't have the earmarks of reliability, or the
25 hallmark that a business record has, and something maintained

1 as a business record. I am going to deny its admission.

2 MR. JACOBSON: May I ask a couple more foundational
3 questions?

4 THE COURT: Go ahead.

5 Q. Turn to page 5 if you would, sir?

6 A. Yes.

7 Q. There is some handwriting on this document?

8 A. Yes.

9 Q. Is that handwriting yours?

10 A. No.

11 Q. There is discussion here?

12 THE COURT: Do you recognize the handwriting?

13 A. It may be Babette Sacoti, that is what it looks like but
14 I am not sure.

15 Q. Looking at, without reading it to the jury or anything,
16 looking at the information stated on page 5, can you
17 determine whether or not you were the source of that
18 information?

19 MR. FRAM: I object. If it is being used to
20 refresh recollection we need a foundational question first.

21 THE COURT: Well, he says he knew nothing about the
22 memo. But I will let him look at that, if he can say he was
23 the source of that or not the source of that, I will let him
24 say that.

25 A. No.

1 Q. All right.

2 MR. JACOBSON: Then I will come at this a different
3 way and a different time.

4 THE COURT: Okay.

5 Q. Now, on your direct examination you read two paragraphs
6 from the bankruptcy decision of April 2. Do you recall that,
7 sir?

8 A. Yes.

9 Q. On page 11 of the document?

10 A. I don't remember the page but I remember reading two
11 paragraphs.

12 Q. And in particular, you read the following language. The
13 end result of what will happen during TWA's Section 1113
14 negotiation is dictated by TWA's inability to survive as a
15 stand-alone enterprise. There simply is no evidence to
16 suggest that TWA is proceeding in bad faith regarding Section
17 1113 obligation.

18 Do you see that?

19 A. Yes, I see it.

20 Q. Now, isn't it a fact that the point in time when the
21 Judge wrote this, he hadn't yet seen your evidence about what
22 TWA's bad faith approach to the negotiations, correct?

23 A. He, our brief had been filed but the hearing had not
24 been held.

25 Q. Your brief had been filed late the Friday before this

1 lengthy twelve-page, two-column small type printed, the
2 opinion was issued on the Monday following.

3 A. That's correct.

4 Q. And your brief outlines what you believe showed TWA's
5 bad faith in its a broach to its negotiations with the
6 pilots. Correct?

7 A. It made an argument about that, yes.

8 Q. All right. It suggested certain facts that would, if
9 accepted, indicate that TWA was negotiating in bad faith?

10 A. It made an argument.

11 Q. You don't want to agree that you mentioned certain facts
12 in your brief, sir?

13 A. No, but I don't, I was making an argument. You are
14 asking me to make a conclusion whether that showed bad faith.
15 I made an argument.

16 Q. I am the no I am not asking you to do that. I am asking
17 in your brief whether you are representing facts that your
18 brief said showed bad faith on the part of TWA?

19 A. Yes.

20 THE COURT: You may.

21 A. Yes, yes, I did.

22 THE COURT: You said that.

23 A. Yes.

24 Q. And if you were to go and fight on it that following
25 Friday at the hearing on the 6th you would be putting up

1 witnesses who you would expect their testimony in part to be
2 evidence of the bad faith?

3 A. We would makes that argument, yeah. Based on this
4 evidence.

5 Q. And you would present that evidence?

6 A. Yes.

7 Q. So when the Judge is saying that there is simply no
8 evidence to suggest, that is because he hasn't heard your
9 evidence yet, correct?

10 A. Yes. Yes. But I found it significant that he reached
11 out to make that statement before the hearing even began. I
12 found that unusual.

13 Q. Well, you believe that judges, like other humans, are
14 swayed by evidence, don't you?

15 A. Yes, but --

16 Q. That is a yes or no.

17 THE COURT: Thank you.

18 MR. JACOBSON: You are welcome.

19 Q. Now, you were asked a little bit about the memos of
20 March 12 or March 13, in advance of the March 14 meeting, do
21 you recall that?

22 A. Yes.

23 Q. Let me hand you --

24 THE COURT: We are talking '01 again.

25 MR. JACOBSON: Yes, we covered more of a year, I

1 should say the year.

2 THE COURT: There were a few things that happened
3 in March of '02 that were significant in this case.

4 MR. JACOBSON: You are right, your Honor.

5 Q. Let me hand you an exhibit marked as D 378.

6 THE COURT: D?

7 MR. JACOBSON: D as in defendant, your Honor. It is
8 already in evidence. I thought it is helpful for people to
9 have paper.

10 Q. Do you recognize this as a memo to you from Mr. Holtzman
11 that you testified about on direct examination?

12 A. Yes.

13 Q. This is where he asks you certain questions or rather is
14 restating questions he claims he asked you on the Saturday
15 before?

16 A. Yes.

17 Q. And could you go through this memo in an attempt to
18 answer these questions?

19 A. Yes.

20 Q. Did you write down your answers by hand on the memo?

21 A. I wrote it down about three or four different times.

22 Q. All right. Let me show you what has been marked for
23 identification, I don't know if it is in evidence yet?

24 THE COURT: What is the number?

25 MR. JACOBSON: P-138, your Honor.

1 THE COURT: P-138 which is also D 378 has been
2 marked for identification but not in evidence.

3 MR. JACOBSON: All right.

4 Q. Mr. Seltzer, is that your handwriting on this document?

5 A. Yes, it is.

6 Q. These are your handwritten notes preparing your answers
7 to Mr. Holtzman's questions?

8 A. Yes.

9 MR. JACOBSON: I would like to offer P-138 in
10 evidence.

11 MR. FRAM: No objection, your Honor.

12 THE COURT: Okay. Then P-138, and I guess D 378,
13 wind up in evidence.

14 Q. All right. Your handwriting is not as bad as some we
15 have seen in this trial?

16 A. It is pretty bad.

17 Q. It is not the equivalent of a newspaper printing. Let's
18 see if we can read portions of this to the jury so they can
19 understand what is on the first -- can you focus on the upper
20 right corner?

21 A. Notes re D Holtzman question.

22 Q. So this is reflecting that this document are your notes
23 regarding Mr. Holtzman's questions?

24 A. Right. As I said I think there are several cones,
25 several times I wrote notes on it.

1 Q. I understand you are saying that. Lower left-hand
2 corner. What does that say?

3 A. Almost no case on meeting of rejection. Better view is
4 that TWA may only implement last proposal as terms and
5 conditions of employment. That's TWA.

6 Q. All right. By that you meant that if negotiation breaks
7 down between TWA and the pilots, and the Court rejects the
8 contract on 1113, then TWA can't impose on the pilots
9 something worse than their last offer?

10 A. That is correct. And I add "that's TWA" because I was
11 referring to the company in bankruptcy.

12 Q. I understand. Turn to the second page. Upper
13 right-hand corner there is some language?

14 Q. What does that say?

15 A. No CBA.

16 Q. Did that means collective were beginning agreement?

17 A. Right. RLA matter.

18 Q. Railway Labor Act matter?

19 A. Correct. Terms and conditions subject to change. I
20 think APA statement.

21 Q. APA is the Allied Pilots?

22 A. It is also the asset purchase agreement. I think I may
23 have been referring to the as pet purchase agreement.

24 Q. Fine.

25 A. And I, see if it is any better here.

1 THE COURT: Can't read my own handwriting.

2 Q. That is fine. Let's go to the first page now. Would
3 you please block the second question and the answer. The
4 question reads what, sir?

5 A. If American continues to insist on a scope waiver.

6 Q. Slow down?

7 A. If American continues to insist on a scope waiver, ALPA
8 refuses and no substitute agreement is concluded, will TWA
9 prevail against ALPA on Section 1113.

10 Q. What was your handwritten answer?

11 A. No, no way.

12 MR. JACOBSON: Thank you. No further cross
13 examination, your Honor.

14 THE COURT: I am sorry. You have concluded your
15 cross.

16 MR. JACOBSON: That is it. It is no, no way.

17 THE COURT: Redirect.

18 REDIRECT EXAMINATION.

19 BY MR. FRAM:

20 Q. Why did you write no, no way?

21 A. I am not usually dyslexic, but the question was often
22 posed is will ALPA prevail. Will ALPA win? In fact there
23 are two other versions of this where I say yes. Absolutely
24 yes.

25 And I remember looking at this after I wrote it,

1 and thinking that I had really been dyslexic dyslexic, that I
2 was answering the absolute opposite question and I have seen
3 since other versions of this where I wrote yes. I simply was
4 answering the wrong question. And that is --

5 Q. Did you ever tell any of the members of the MEC in
6 response to the question of whether TWA prevailed against
7 ALPA, "No, no way?"

8 A. I did not.

9 MR. FRAM: Thank you. That is all I have, your
10 Honor.

11 MR. JACOBSON: I think the document and the
12 testimony stands.

13 THE COURT: The document is the document.

14 MR. JACOBSON: Yes.

15 THE COURT: Okay. That is it then. No further
16 questions. You may step down.

17 THE WITNESS: Thank you, your Honor.

18 (Witness excused)

19 MR. FRAM: We have no further live testimony. We
20 have some video issues, we have not resolve all the issues on
21 that. We have in depositions and reading we have not been
22 able to resolve.

23 THE COURT: I reviewed them, Babbitt, that is the
24 only one I had, I was going to allow the very, the few lines
25 that were listed, that were contested.

1 MR. FRAM: The ones we submitted yesterday.

2 THE COURT: Yes. I didn't know you were supposed
3 to reach agreement as to the uncontested parts.

4 MR. PRESS: Yesterday afternoon before we broke you
5 ordered the defendant to provide us the comprehensive list of
6 what it is they intended to play. We didn't get that until
7 first thing this morning. I asked for it yesterday. So I
8 haven't had a chance to review. Remember you wanted to be
9 clear that we had no problem.

10 THE COURT: I just want to be clear that what was
11 supposed to be uncontested was truly uncontested. So there
12 wasn't such --

13 MR. PRESS: If I had gotten this list I would have
14 been prepared.

15 THE COURT: Let's give the jury a break now. Look
16 at it now. My understanding is the Babbitt section is pretty
17 short.

18 MR. FRAM: I am told it is over an hour, your
19 Honor. We probably can't finish it today.

20 THE COURT: Anything else that is short?

21 MR. FRAM: We don't, your Honor.

22 THE COURT: Are you done with your live witnesses
23 period?

24 MR. FRAM: We are, your Honor.

25 THE COURT: All right. So that all that is left

1 for your case are various readings and play goes of prior
2 depositions.

3 MR. FRAM: Yes. And we need a short conversation
4 with counsel to work out issues. Yeah, very few --

5 THE COURT: Okay. So you anticipate that you could
6 be completed tomorrow?

7 MR. FRAM: Oh, absolutely, your Honor.

8 THE COURT: And then for rebuttal, have you made
9 decisions yesterday?

10 MR. PRESS: We have, your Honor. Sherry Cooper, we
11 intend to call.

12 THE COURT: Okay.

13 MR. PRESS: That should be a short-ish witness.

14 THE COURT: I don't know how you are going to
15 present it. Is that it?

16 MR. PRESS: Beyond that, I think that is it. I
17 don't think there is anything beyond that.

18 THE COURT: Okay. Then I think what I am going to
19 do is try to work for the next few minutes on resolving what
20 I can the issues on the playback feedback, and, so ladies and
21 gentlemen of the jury, we will let you go a few minutes early
22 today.

23 You have heard where we are. That this portion of
24 the case, on the presentation of evidence may well be
25 finished tomorrow or the next day. So after that we will

1 have closing arguments by the parties. My instructions as to
2 the law. And your deliberations. Then we will have a
3 better sense of where we are. So I am going to send you
4 home. Don't discuss the case acknowledge yourselves. Keep
5 an open mind. Until you have heard all the evidence. We are
6 very close to the end of the case. I will see you tomorrow
7 morning at 8:30. Again, job one, safe trip home and a safe
8 trip in tomorrow.

9 (The jury leaves the courtroom.)

10 THE COURT: All right. I will be here until 2 30.
11 Anything you can get to me by then on the issues, as I said,
12 I read the, it was only a few pages. It was very short
13 Babbitt extract and I was going to permit those in. They
14 were limited pretty much to what he told members of the MEC
15 or the MEC officers of ALPA. But I don't know what is in the
16 other stuff.

17 Anything else you can get me to look at. What is
18 the other piece you want to play, Babbitt.

19 MR. FRAM: Other than Babbitt it was going to be
20 possibly a short reading of some of Bensele and a short
21 reading --

22 THE COURT: That is a pretty testy issue right now.

23 MR. FRAM: We need to talk about it to see how
24 testy it is. If we can work it out, great. If we can't, we
25 may just withdraw it.

1 THE COURT: Yeah. I have to say it is a little
2 troublesome to have somebody who was at the eye of the
3 hurricane for six or seven or eight years in this case and
4 then have him suddenly pop off in the form of small extract
5 from his deposition.

6 But any way, I will wait to see what you come up
7 with on that issue, if it is presented. If you want to
8 offer it, I will evaluate what Mr. Press wants.

9 MR. PRESS: We will meet and confer and try to get
10 everything resolved.

11 THE COURT: Okay. Now, is Ms. Cooper, is she going
12 to be here tomorrow?

13 MS. RODRIGUEZ: No, she can't be here until Monday.
14 She has a funeral tomorrow.

15 THE COURT: Tomorrow is Thursday. Well, that is
16 probably okay.

17 MR. PRESS: Should we be prepared to argue jury
18 instructions tomorrow?

19 THE COURT: Yeah, I already have a draft of them.
20 I want to look at it again, I am ready to give to you.

21 Have you given any thought, I mean, if the jury
22 comes in with no cause, that is the the end of the case until
23 some higher, if the jury comes in for the plaintiff, then in
24 a sense that is not a final judgment. Anybody given any
25 thought as to how we plan to proceed. I take it nobody is

1 really ready to proceed.

2 MR. JACOBSON: I have a thought, your Honor.

3 THE COURT: What is that?

4 MR. JACOBSON: We go into rapid discovery on
5 damages.

6 THE COURT: It won't be the same jury. It will be
7 a different jury.

8 MR. JACOBSON: Yes.

9 THE COURT: We are not going to try to hold this
10 jury. Rapid discovery, I am all in favor of that. But we
11 all accept that I am not going to try to hold this jury here
12 for something -- whatever familiarity they have with the
13 case, plaintiff really isn't ready to go to the damage phase.

14 MR. PRESS: That is true.

15 THE COURT: I am not trying to tell tales out of
16 school. That is the sense I get. Okay. All right.

17 MR. FRAM: Your Honor, I think you mentioned
18 earlier in the week that you would be inclined to hear
19 argument on the Rule 50 motion tomorrow.

20 THE COURT: I scheduled it. I think it is on my
21 calendar for tomorrow.

22 MS. RODRIGUEZ: Yes.

23 THE COURT: 3:30 tomorrow.

24 MR. FRAM: We haven't seen opposition papers yet.

25 THE COURT: Nor have I.

1 MR. FRAM: I wonder if they are expected.

2 THE COURT: I don't know. I have scheduled it for
3 argument.

4 MS. RODRIGUEZ: We anticipate them when filing them
5 when we get back to the office this afternoon. They are
6 short.

7 THE COURT: What?

8 MS. RODRIGUEZ: They are short.

9 THE COURT: All right. I will do the best I can to
10 read it and be prepared with it. Okay. 3:30 it is on my
11 calendar for 3:30 argument.

12 MR. JACOBSON: Your Honor, if we finish with the
13 evidence earlier, because it sounds like there is not a whole
14 lot left, can we go right into the argument?

15 THE COURT: I mean I think you should all be, I
16 think you all, I know we have a couple of snippets of tape,
17 and a possibility of Sherry Cooper testifying.

18 MR. JACOBSON: Not tomorrow.

19 THE COURT: I am not going to have argument before,
20 I can't have a witness after her.

21 MS. RODRIGUEZ: He is talking about argument on the
22 motion I think, your Honor.

23 MR. JACOBSON: The Rule 50 motion, your Honor.

24 THE COURT: Well, we want to do it. We have to do
25 it before it is submitted to the jury. That is the linchpin

1 point.

2 MR. FRAM: We can do it before.

3 THE COURT: Right.

4 MR. FRAM: We did do it before Sherry Cooper
5 testifies.

6 THE COURT: Well, as a practical matter we can do
7 it Tuesday, I suppose. She is going to be here Monday. What
8 is left is Thursday. Friday I hadn't planned to be here
9 actually. But --

10 MS. RODRIGUEZ: I think Mr. Jacobson's point was if
11 they get done their testimony at noon, instead of waiting
12 until 3:30 for the motion, can we do it at 12:30?

13 MR. JACOBSON: That is what I was asking.

14 THE COURT: Oh, oh, oh, I am sorry. The answer to
15 that is yes. You tell me you want to do it at noon or an
16 earlier time and we don't have any testimony to interfere
17 with that. Oh, yes. Absolutely.

18 MR. JACOBSON: I think all the lawyers prefer that
19 if it is possible.

20 THE COURT: You won't get my resistance from me. I
21 just put it at 3:30 because that was the available time we
22 had tomorrow but if it turns out things break earlier and the
23 case is done. We will do it earlier, I will do it earlier.

24 MS. RODRIGUEZ: Thank you.

25 THE COURT: No problem at all.

1 MR. FRAM: Your Honor, in terms of other
2 scheduling, after Sherry Cooper Monday, would your Honor want
3 to move into a charge conference at that point?

4 THE COURT: I want to give you the draft first so
5 you can read it. Then have a charge conference. We can pass
6 over the points of dispute. You did have significant
7 differences, most of the, most of it us agreed on, there is a
8 small part of the charge that is actually contested.

9 MR. JACOBSON: Only the important parts.

10 THE COURT: Well, that is not always the case for
11 the charge. There may be a sentence or two.

12 MR. PRESS: The verdict directing instructions were
13 where we had the difference.

14 THE COURT: I think starting at paragraph 13, 14,
15 15. Anyway, we drafted something to try to accommodate. I
16 want you to have it and read it before we have the charge
17 conference.

18 MR. PRESS: Sounds good.

19 MR. FRAM: Thank you, your Honor.

20 THE COURT: Okay. See you tomorrow at 8:30.

21 MR. PRESS: Your Honor, we will not have closing
22 arguments on Monday. Is that true? They would be Tuesday at
23 the earliest?

24 THE COURT: Well, I don't know. I mean, if the
25 only order of business we have is Sherry Cooper on Monday,

1 she might only take an hour. I mean, an hour and a half. I
2 don't know exactly, but I mean she is making a few bullet
3 points. Cross on those points, she doesn't, I mean the whole
4 area of MEC consideration, she really is, there is nothing to
5 it.

6 She is going to try to testify on the stand-alone
7 plan. I believe. And maybe the trophy testimony, let's call
8 it that, what we mean by that. But that doesn't strike me as
9 long.

10 There may be some issues, but it is not long
11 testimony. So that could be done in an hour, hour and a
12 half. Why couldn't we have the closing.

13 What is the reason?

14 MR. JACOBSON: There is no reason not to.

15 MR. PRESS: No reason. For planning purposes and
16 letting my clients know.

17 THE COURT: Again. If we use you up tomorrow
18 working out whatever is left of Mr. Fram's case, whatever
19 arguments we have on the Rule 50 motion, and then Monday we
20 have an hour of Ms. Cooper, an hour and a half, two hours,
21 that would leave four hours. We could certainly get in one
22 closing.

23 I don't have a real sense, it has to do as much
24 with the personal style of the lawyers as it does with the
25 inherent -- I don't know how -- I will permit you to divide

1 up the closings if you want to cover different topics. Same
2 for you if you want to have one person cover one topic and
3 another person cover another, I will allow that but I don't
4 have a real sense, as I say, it really depends on personal
5 style as much as it does on the intrinsic nature of the case.
6 So.

7 MR. PRESS: I asked the question because I remember
8 the openings you wanted to start fresh with the opening
9 statement. I didn't know if you had the same view with the
10 closing.

11 THE COURT: No. I hate to waste a whole day. Ms.
12 Cooper takes an hour, an hour and a half. And we have six or
13 five hours left, my instinct would be that a reasonably
14 efficient closing would be two, two and a half hours, and
15 that is it. You may think that is way too short, way two
16 long.

17 MR. PRESS: Just right.

18 THE COURT: I think we can get going on it. And
19 start.

20 MR. PRESS: Good.

21 THE COURT: Defendant closes first in a civil case.

22 MR. PRESS: Okay. Really?.

23 MS. RODRIGUEZ: We adopted the state court
24 practice.

25 THE COURT: We used to call it the state court

1 practice. It was the state who started. We used to talk
2 about following the state court practice. The way it works,
3 the party with the burden of proof goes last. And in other
4 words, gets the last shot at the jury so the defendant
5 closes, and then, we don't use, in criminal case cases we
6 have a different procedure, because the rebuttal closes.
7 The government goes first, then the defendant, then the
8 government gets a rebuttal. But that is used only in
9 criminal procedures.

10 With us it is, I don't believe there is any Judge,
11 at least in this courthouse, that.

12 MR. PRESS: Does the defendant get to break up his
13 time so he has to come back?

14 THE COURT: No.

15 MR. PRESS: He gives his entire closing and I stand
16 up and give mine?

17 THE COURT: Yes.

18 MR. PRESS: I never heard of it.

19 MR. JACOBSON: It is no different than what we do in
20 the midwest. In Missouri, Illinois, Kansas, all those
21 places, the party with the burden of proof goes first, then
22 the defendant goes. Then first party.

23
24 (Off-the-record discussion)

25 MR. PRESS: Can we refer to the charges.

1 THE COURT: Yes, you can read from the charge.

2 Both sides can use the charge.

3 Try to get here at eight tomorrow.

4 (Off-the-record discussion)

5 (Adjourned at 1:45 p.m.)

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I N D E X.

SETH ROSEN, SWORN.

DIRECT EXAMINATION P. 3.

CROSS EXAMINATION P. 39.

REDIRECT EXAMINATION P. 76.

RICHARD SELTZER, SWORN.

DIRECT EXAMINATION P. 89.

CROSS EXAMINATION P. 159